

EXHIBIT 7

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
HAPAG-LLOYD AKTIENGESELLSCHAFT,

Plaintiff,

Case No.
-against- 14-cv-9949 (VEC)

U.S. OIL TRADING LLC, O.W. BUNKER
GERMANY GMBH, O.W. BUNKER & TRADING
A/S, ING BANK N.V., CREDIT AGRICOLE
S.A.,

Defendants.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
HAPAG-LLOYD AKTIENGESELLSCHAFT,

Plaintiff,

Case No.
-against- 14-cv-10027 (VEC)

O'ROURKE MARINE SERVICES, L.P.,
L.L.P., O.W. BUNKER GERMANY GMBH,
O.W. BUNKER USA, INC., ING BANK N.V.,

Defendants.

-----x
January 19, 2016
10:05 a.m.

DEPOSITION of RULE 30(b)(6) WITNESS

NORBERT KOCK

<p style="text-align: right;">Page 2</p> <p>1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF NEW YORK 3 -----x 4 U.S. OIL TRADING LLC, 5 Plaintiff, 6 Case No. 7 -against- 15-cv-6718 (VEC) 8 9 M/V VIENNA EXPRESS, her tackle, 10 boilers, apparel, furniture, 11 engines, appurtenances, etc., 12 in rem: M/V SOFIA EXPRESS, her 13 tackle, boilers, apparel, furniture, 14 engines, appurtenances, etc., in rem, 15 Defendants. 16 -----x 17 HAPAG-LLOYD AKTIENGESELLSCHAFT, as 18 Claimant to the M/V VIENNA EXPRESS, 19 Counter-Claimant and 20 Third-Party Plaintiff, 21 - against - 22 U.S. OIL TRADING LLC, 23 Counter-Defendant and 24 25 O.W. BUNKER GERMANY GMBH, O.W. BUNKER 16 & TRADING A/S, ING BANK N.V., and CREDIT 17 AGRICOLE CORPORATE AND INVESTMENT BANK 18 a division or arm of CREDIT AGRICOLE S.A., 19 Third-Party Defendant. 20 -----x 21 Deposition of Rule 30(b)(6) Witness. 22 NORBERT KOCK, pursuant to Notice, held at the 23 offices of Freehill Hogan & Maher LLP, 80 Pine 24 Street, New York, New York, before Roberta 25 Caiola, a Shorthand Reporter and Notary Public within and for the State of New York.</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S: 2 3 Attorneys for U.S. Oil Trading LLC: 4 CLYDE & CO. US LLP 5 405 Lexington Avenue 6 New York, New York 10174 7 BY: CASEY BURLAGE, ESQ. 8 AND: JOHN KEOUGH, ESQ. 9 10 Attorneys for O.W. Bunker Germany GMBH: 11 HILL RIVKINS LLP 12 45 Broadway, Suite 1500 13 New York, New York 10006-3739 14 BY: JUSTIN M. HEILIG, ESQ. 15 16 Attorneys for O'Rourke Marine Services L.P.: 17 SIMMS SHOWERS LLP 18 201 International Circle, Suite 250 19 Hunt Valley, Maryland 21030 20 BY: CASEY L. BRYANT, ESQ. 21 (Appearing Telephonically) 22 23 ALSO PRESENT: 24 Andrew Rona, The Interpreter 25</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 Attorneys for Defendant ING Bank N.V., 4 as Security Agent: 5 SEWARD & KISSEL LLP 6 One Battery Park Plaza 7 New York, New York 10004 8 BY: BRIAN P. MALONEY, ESQ. 9 AND: MICHAEL W. BROZ, ESQ. 10 11 Attorneys for Hapag-Lloyd Aktiengesellschaft: 12 FREEHILL HOGAN & MAHAR LLP 13 80 Pine Street 14 New York, New York 10005 15 BY: MICHAEL FERNANDEZ, ESQ. 16 AND: MICHAEL DEHART, ESQ. 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX 2 Witness Examination By Page 3 Norbert Kock Mr. Maloney 12 4 Mr. Heilig 120 5 Mr. Keough 165 6 Ms. Bryant 216 7 Mr. Maloney 220 8 9 E X H I B I T S 10 Kock Description Page 11 Exhibit 1 Notice of Rule 30(b)(6) 12 12 Deposition 13 Exhibit 2 Notice of Rule 30(b)(6) 12 14 Deposition 15 Exhibit 3 Document Bates stamped USOT 24 16 000101 through USOT 107 17 Exhibit 4 Document Bates stamped 41 18 HPL-USOT page 131 19 Exhibit 5 Document Bates stamped 43 20 HPL-USOT 135 and HPL-USOT 136 21 Exhibit 6 Document Bates stamped 49 22 HPL-USOT 137 and HPL-USOT 138 23 Exhibit 7 Document Bates stamped 50 24 HPL-USOT 139 and HPL-USOT 140 25</p>

2 (Pages 2 to 5)

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<p>1 Norbert Kock (1-19-16)</p> <p>2 interpreter here today and we'll do that. Does</p> <p>3 that make sense?</p> <p>4 A. That makes sense.</p> <p>5 MR. FERNANDEZ: Brian, at the</p> <p>6 beginning, are we reserving all objections but</p> <p>7 for form and foundation, federal stipps or usual</p> <p>8 stipps?</p> <p>9 MR. KEOUGH: That's fine with me.</p> <p>10 The witness will sign before any notary if he so</p> <p>11 chooses.</p> <p>12 MR. MALONEY: Okay.</p> <p>13 Q. By whom are you employed?</p> <p>14 A. I'm employed by Hapag-Lloyd AG in</p> <p>15 Hamburg.</p> <p>16 Q. That's the entity that's the named</p> <p>17 party in this case?</p> <p>18 A. Yes.</p> <p>19 Q. Are there any other parent</p> <p>20 companies or subsidiaries that you're employed</p> <p>21 by?</p> <p>22 A. No.</p> <p>23 Q. What's your title?</p> <p>24 A. My title is Director of Purchasing</p> <p>25 and Supply.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 I'll ask you to take a look at the</p> <p>3 documents that we've marked as Exhibits 1 and 2?</p> <p>4 MR. FERNANDEZ: Are there extra</p> <p>5 copies, Brian?</p> <p>6 MR. MALONEY: Absolutely. So</p> <p>7 Exhibit 1 for the record is the Notice of</p> <p>8 Deposition in case number 14-cv-9949, which is</p> <p>9 Hapag-Lloyd against U.S. Oil Trading and others.</p> <p>10 Exhibit Number 2 is 14 CV 10027, Hapag-Lloyd</p> <p>11 against O'Rourke Marine Services, and others.</p> <p>12 Q. Sir, have you seen these documents</p> <p>13 before?</p> <p>14 A. No.</p> <p>15 Q. What did you do to prepare for</p> <p>16 today's deposition?</p> <p>17 A. For today's preparation we had a</p> <p>18 brief meeting yesterday, because I've never been</p> <p>19 part of such a deposition neither here nor</p> <p>20 Germany, nor anywhere else in the world, and the</p> <p>21 gentlemen explained to me a bit about the</p> <p>22 procedure here and what it is all about.</p> <p>23 Q. Could you turn to page 3 of the</p> <p>24 document that we've marked as Exhibit 1. Have</p> <p>25 you seen any of these topics before here on page</p>
Page 15	Page 17
<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. What are your job responsibilities</p> <p>3 as the director of purchasing and supply?</p> <p>4 A. I am responsible for providing the</p> <p>5 fleet of Hapag-Lloyd's owned and chartered</p> <p>6 containers with fuel oil and lubricants, and</p> <p>7 some selected chemicals, marine chemicals</p> <p>8 worldwide.</p> <p>9 Q. You mentioned that Hapag-Lloyd has</p> <p>10 a fleet. Does it own many vessels?</p> <p>11 A. Hapag-Lloyd owns a good number of</p> <p>12 vessels, but also chartered a good number of</p> <p>13 vessels. The total capacity at the moment is</p> <p>14 about 175 vessels operated.</p> <p>15 Q. So Hapag-Lloyd operates about 175</p> <p>16 vessels?</p> <p>17 A. Yes.</p> <p>18 Q. That's either owned or chartered?</p> <p>19 A. Yeah.</p> <p>20 Q. I'm going to show you documents</p> <p>21 that we've marked as Exhibits 1 and 2. It's the</p> <p>22 Notice of 30(b)(6) Deposition that we've issued</p> <p>23 in two of these three cases. I believe the</p> <p>24 understanding is that you're here for a third</p> <p>25 case as well, case number 15-cv-6718.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 3?</p> <p>3 MR. FERNANDEZ: Objection to form.</p> <p>4 A. Some of this has been part of the</p> <p>5 declaration I had given earlier this year.</p> <p>6 Q. You understand that you're</p> <p>7 appearing here today as the corporate</p> <p>8 representative of Hapag-Lloyd, and you prepared</p> <p>9 yourself to answer questions about topics, such</p> <p>10 as the topics that are listed here on page 3?</p> <p>11 A. Yes.</p> <p>12 Q. Who at Hapag-Lloyd is authorized to</p> <p>13 procure fuel bunkers for the vessels?</p> <p>14 A. The Hapag-Lloyd purchasing</p> <p>15 department.</p> <p>16 Q. Who is in the Hapag-Lloyd</p> <p>17 purchasing department?</p> <p>18 A. As it's my department, I'm leading</p> <p>19 that department as a director and I'm leading a</p> <p>20 team of purchasing managers. This team is</p> <p>21 entitled also to order fuel oil -- we are</p> <p>22 entitled and authorized to order and purchase</p> <p>23 fuel oil.</p> <p>24 Q. And about how long have you been</p> <p>25 the director of the fuel purchasing department</p>

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<p>1 Norbert Kock (1-19-16) 2 at Hapag-Lloyd? 3 A. As a director, they put me into 4 that position I think it was in October 2007. 5 Q. About how long have you been 6 working for Hapag-Lloyd? 7 A. I started my career at Hapag-Lloyd 8 in 1990. 9 Q. Were you employed by any other 10 companies previous to that? 11 A. Yes. 12 Q. Where were you employed prior to 13 1990? 14 A. Prior to 1990 I have been employed 15 by a company called Sachs-Dolmar, which is a 16 chain saw manufacturer. 17 Q. Would you mind spelling that for 18 the record? 19 A. At that time the company's name 20 was -- 21 THE INTERPRETER: Spell just the 22 name. 23 A. S-a-c-h-s then hyphen D-o-l-m-a-r. 24 Q. What was your first position at 25 Hapag-Lloyd?</p>	<p>1 Norbert Kock (1-19-16) 2 the 1990s? 3 A. At that time we operated about 35, 4 40 vessels. 5 Q. So by the time of about 2007, 6 Hapag-Lloyd had grown and you needed more 7 purchasers on the team? 8 A. Yes. 9 Q. So you've been director of the fuel 10 purchasing team from 2007 to the present? 11 A. Right. 12 Q. In about 2013 and 2014, about how 13 large was the bunker purchasing team at 14 Hapag-Lloyd? 15 A. At that time we had a total team of 16 five persons, including me. There was me as a 17 director and four purchasing managers. 18 Q. Who were the purchasing managers on 19 your team? 20 A. The purchasing manager on my team 21 at that time was Lukas Gaus. 22 Q. L-u-k-a-s? 23 A. Yes. Then Gaus, G-a-u-s. Nikolai 24 Doerner. 25 Q. Would you mind spelling that?</p>
Page 19	Page 21
<p>1 Norbert Kock (1-19-16) 2 A. A purchasing manager for technical 3 spare parts and tools. 4 Q. And you came to that position in 5 1990? 6 A. Yes. 7 Q. What did you do after that? 8 A. They lifted me into the position of 9 a director. 10 Q. So you were the purchasing -- 11 A. Between May 1990 and 1992 I was a 12 technical purchasing manager, and then I moved 13 over into the position of a fuel oil purchaser 14 in 1992, and stayed in this position until 2007. 15 Q. Could you describe what your 16 responsibilities were as a fuel oil purchaser 17 during that time period, between 1992 and 2007? 18 A. I was physically doing the 19 purchasing, there was no team. I mean there was 20 a small team, the team was only limited to, when 21 I started, to two persons. 22 Q. Was Hapag-Lloyd a smaller company 23 back in the 1990s? 24 A. Yes. At that time, yes. 25 Q. About how large was Hapag-Lloyd in</p>	<p>1 Norbert Kock (1-19-16) 2 A. Nikolai, N-i-k-o-l-a-i, and the 3 family name Doerner, it's D-o-e-r-n-e-r. Then 4 we have Mrs. Niemeyer, Dorit Niemeyer. 5 Q. N-i-e-m-e-y-e-r? 6 A. Yeah, Niemeyer. We had Ana Dubois. 7 THE INTERPRETER: D-u-b-o-i-s. 8 Q. So those individuals report to you, 9 correct? 10 A. Yes. 11 Q. Who do you report to? 12 A. I report to the senior director of 13 purchasing and supply. The name? 14 Q. Yes. Please. 15 A. Ulf Naujeck. U-l-f, then the 16 family name Naujeck, N-a-u-j-e-c-k. 17 Q. Is the bunker purchasing team 18 located in Hamburg? 19 A. Yes. 20 Q. That is where Hapag-Lloyd is 21 headquartered? 22 A. Yes. 23 Q. About how many employees does 24 Hapag-Lloyd have in total today? 25 MR. FERNANDEZ: Is this in Hamburg</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 or worldwide?</p> <p>3 A. I think worldwide about 12,000.</p> <p>4 I'm not sure. We have a lot of seafarers, we</p> <p>5 have a lot of land-based people, we have a lot</p> <p>6 of offices around worldwide.</p> <p>7 Q. So worldwide, ballpark, about</p> <p>8 12,000 people?</p> <p>9 A. I would assume that, yes.</p> <p>10 Q. And in Hamburg, about how many</p> <p>11 people in the headquarters?</p> <p>12 A. In Hamburg, I think about a</p> <p>13 thousand. This is also an estimation, I don't</p> <p>14 have the actual figures.</p> <p>15 Q. Do you understand that the cases</p> <p>16 that you're appearing here in connection as</p> <p>17 Hapag-Lloyd's corporate representative today</p> <p>18 involve certain bunker purchasing transactions</p> <p>19 with vessels that involved Hapag-Lloyd,</p> <p>20 including the SANTA ROBERTA, the SEASPACE,</p> <p>21 HAMBURG, the VIENNA EXPRESS, the SOFIA EXPRESS,</p> <p>22 the DERBY D and SIDNEY EXPRESS?</p> <p>23 A. Yes.</p> <p>24 Q. Did Hapag-Lloyd own or charter</p> <p>25 those vessels?</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. Let me show you a document with</p> <p>4 Bates numbers USOT 000101 through 107. This is</p> <p>5 a document that's attached to Hapag-Lloyd's</p> <p>6 complaint that was filed December 17, 2014.</p> <p>7 MR. MALONEY: We'll mark it as</p> <p>8 Exhibit 3.</p> <p>9 (Kock Exhibit 3, Document Bates</p> <p>10 stamped USOT 000101 through USOT 107, marked for</p> <p>11 identification.)</p> <p>12 Q. Sir, have you seen this document</p> <p>13 before?</p> <p>14 A. Yes.</p> <p>15 Q. What is this document?</p> <p>16 A. This is a contract pamphlet</p> <p>17 covering our requirements, our fuel oil</p> <p>18 requirements in the Ports of Antwerp and</p> <p>19 Rotterdam during the period of January 1st and</p> <p>20 December 31, 2014.</p> <p>21 Q. And the --</p> <p>22 A. For the below mentioned fuel oil</p> <p>23 grades and expected quantities.</p> <p>24 Q. What does ARA mean at the top?</p> <p>25 A. ARA is the abbreviation for the</p>
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<p>1 Norbert Kock (1-19-16)</p> <p>2 A. The VIENNA EXPRESS is an owned</p> <p>3 vessel.</p> <p>4 Q. We'll take them one by one as we go</p> <p>5 through. In connection with those vessels that</p> <p>6 I just mentioned, did Hapag enter into a</p> <p>7 contract with anyone whereby they purchased fuel</p> <p>8 for those vessels?</p> <p>9 MR. FERNANDEZ: Objection to the</p> <p>10 form.</p> <p>11 A. The purchasing is done by</p> <p>12 Hapag-Lloyd's purchasing department. We are not</p> <p>13 entitling any other party to do the purchasing</p> <p>14 for us, we are the responsible purchasers.</p> <p>15 Q. Understood. So in connection with</p> <p>16 those vessels that I mentioned, those six</p> <p>17 vessels, who did Hapag-Lloyd's bunker purchasing</p> <p>18 department purchase the fuel from?</p> <p>19 A. We purchased the fuel from O.W.</p> <p>20 Bunker in Germany.</p> <p>21 Q. O.W. Bunker Germany, GMBH?</p> <p>22 A. Yes.</p> <p>23 Q. Did you enter into any agreements</p> <p>24 with O.W. Bunker Germany about the price of fuel</p> <p>25 that you would purchase from them?</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Ports of Hamburg, Rotterdam and Amsterdam.</p> <p>3 Q. This contract appears to relate to</p> <p>4 fuel deliveries during the year 2014?</p> <p>5 A. Yes.</p> <p>6 Q. And the seller is listed as O.W.</p> <p>7 Bunker Germany?</p> <p>8 A. Yes.</p> <p>9 Q. And the buyer is Hapag-Lloyd AG in</p> <p>10 Hamburg?</p> <p>11 A. Yes.</p> <p>12 Q. Does this contract relate to</p> <p>13 particular fuel deliveries, or is it a pricing</p> <p>14 agreement that's used prior to particular</p> <p>15 transactions being entered into?</p> <p>16 MR. FERNANDEZ: Objection to the</p> <p>17 form.</p> <p>18 A. This is a pricing agreement on</p> <p>19 expected annual quantities which we provided</p> <p>20 here in column 3 and 4, because we contracted</p> <p>21 some different fuel oil grades here in this</p> <p>22 contract. RMG, RMK 700, RMK 500 low sulfur, RMG</p> <p>23 380 low sulfur, and distillate fuel like DMZ and</p> <p>24 DMA, also low sulfur.</p> <p>25 MR. FERNANDEZ: For the record, the</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 witness is referring to USOT 101, the first page</p> <p>3 of the document.</p> <p>4 Q. Was this agreement for one</p> <p>5 transaction or more than one transaction?</p> <p>6 A. More than one transaction.</p> <p>7 Q. Were you involved or was a member</p> <p>8 of your team involved in negotiating this</p> <p>9 document?</p> <p>10 A. Yeah. I was involved, team members</p> <p>11 were involved, as well as the senior director of</p> <p>12 purchasing and supply.</p> <p>13 Q. When was the first time that you</p> <p>14 worked with O.W. Bunker Germany or other</p> <p>15 entities in the O.W. Bunker Group?</p> <p>16 A. We started working with O.W. in</p> <p>17 2007.</p> <p>18 Q. Did you often purchase fuel from</p> <p>19 O.W. Bunker Germany?</p> <p>20 MR. FERNANDEZ: Objection to the</p> <p>21 form. Go ahead, you can answer.</p> <p>22 A. Yes.</p> <p>23 Q. Did you deal with any other</p> <p>24 entities in the O.W. Bunker Group?</p> <p>25 A. No.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 indicative and the buyer is allowed to exceed or</p> <p>3 reduce the quantities, along with buyer's</p> <p>4 requirements, in the above mentioned ports by</p> <p>5 plus or minus 20%."</p> <p>6 Do you have an understanding of</p> <p>7 what that means?</p> <p>8 A. In case of unexpected changes of</p> <p>9 services there is a good chance that we will be</p> <p>10 not able to take the expected quantities as</p> <p>11 given in this contract here. Or in case of</p> <p>12 vessel sales, there might be a good chance to</p> <p>13 buy less than previously agreed upon. Or it's</p> <p>14 the other way around, it could be even more</p> <p>15 sometimes.</p> <p>16 This is just a requirement to</p> <p>17 secure that there is some kind of flexibility in</p> <p>18 these quantities, that we are not bound to these</p> <p>19 quantities, to have a flexibility of some plus</p> <p>20 or minus 20 percent.</p> <p>21 Q. In case the vessel needs more or</p> <p>22 less?</p> <p>23 A. In case the vessel needs more or</p> <p>24 less, or in case we are just changing service</p> <p>25 volumes from one area to another area.</p>
Page 27	Page 29
<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. Only with O.W. Germany?</p> <p>3 A. Yes. There was a time in between</p> <p>4 when they were -- when the company was named</p> <p>5 Wrist Bunker.</p> <p>6 Q. Wrist, W-r-i-s-t?</p> <p>7 A. Yes. This was the same people.</p> <p>8 Q. About how long did it take to</p> <p>9 negotiate this document here, USOT page 101?</p> <p>10 A. This contract was negotiated for</p> <p>11 the total requirements of that specific -- these</p> <p>12 products during the period of 2014, though it</p> <p>13 has been negotiated between October to</p> <p>14 December 2013.</p> <p>15 Q. Did you have a pricing agreement in</p> <p>16 place for the year 2013 with O.W. Germany?</p> <p>17 MR. FERNANDEZ: Objection to the</p> <p>18 form.</p> <p>19 A. Might be. I don't have access to</p> <p>20 my records here. So it could be that we had</p> <p>21 selected products agreements also in 2013 also</p> <p>22 in other areas, not only in Rotterdam and</p> <p>23 Antwerp.</p> <p>24 Q. The line below the chart reads:</p> <p>25 "The above mentioned quantities are</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Sometimes it could happen that we will buy less</p> <p>3 fuel oil in Northwest Europe and shift</p> <p>4 quantities, more quantities to Asia; because</p> <p>5 also maybe the price levels in Asia could drop</p> <p>6 below Northwest Europe and we could take more in</p> <p>7 Asia; to have that flexibility.</p> <p>8 Q. In the event you needed to make</p> <p>9 those changes, you would communicate with</p> <p>10 persons at O.W. Germany?</p> <p>11 A. Yes.</p> <p>12 Q. Under the heading marked</p> <p>13 "Pre-Planning" the document reads "Monthly</p> <p>14 pre-planning schedule to be sent in advance for</p> <p>15 the following month."</p> <p>16 Did Hapag-Lloyd send a schedule to</p> <p>17 O.W. Germany?</p> <p>18 A. Yes.</p> <p>19 Q. What was the purpose of the monthly</p> <p>20 pre-planning schedule?</p> <p>21 A. To give them an idea about the</p> <p>22 estimated quantities which will be taken in that</p> <p>23 month. Plus, they have also to take care to</p> <p>24 have enough product available for us.</p> <p>25 Q. Could you tell me what the line</p>

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<p>1 Norbert Kock (1-19-16) 2 in this version of our terms and conditions. 3 Q. Looking at page 102 -- 4 A. Claims. This is paragraph 13 on 5 page 106 on top, any claim to the quality or the 6 description of this fuel oil must be notified in 7 writing promptly after the circumstances giving 8 rise to such claim have been discovered, if the 9 buyer do not notify the seller of such claim 10 within 60 calendar days of the date of delivery 11 for term contracted low sulfur fuel oil supplies 12 in Antwerp or Rotterdam. 13 So this mentioned here means we 14 have a special agreement on the -- or we have 15 had a special agreement on the quality claim of 16 60 days only for low sulfur fuel oils in Antwerp 17 and Rotterdam. Then the next sentence says 30 18 days of the date of delivery for supplies of oil 19 in remaining ports worldwide. So this pamphlet 20 here is not a standard Hapag -Lloyd pamphlet, 21 this pamphlet here has been negotiated with O.W. 22 Q. So these terms and conditions apply 23 to purchases and sales with O.W. Bunker Germany, 24 is that your position? 25 A. Yes.</p>	<p>1 Norbert Kock (1-19-16) 2 by O.W. Bunker Germany, because they didn't 3 accept our required claim period of 60 days at 4 that time. 5 Q. So is it fair to say that the 6 document at 101 and 102 was prepared by O.W. 7 Bunker Germany? 8 A. Yes. 9 Q. And that the terms and conditions 10 at pages 103 to 107 were prepared by 11 Hapag-Lloyd? 12 A. Yes. 13 Q. The SANTA ROBERTA, that's one of 14 the vessels at issue here today, was that on 15 time charter in 2014? 16 A. It was a charter vessel. I don't 17 know whether it was a time charter. It was a 18 charter vessel at that time. 19 Q. Do you know whether the 20 relationship was governed by a Charter Party 21 agreement? 22 A. Yes, it must be a Charter Party. 23 Q. Was it Hapag-Lloyd that was 24 responsible for purchasing the fuel for the 25 SANTA ROBERTA?</p>
<p style="text-align: center;">Page 39</p> <p>1 Norbert Kock (1-19-16) 2 MR. FERNANDEZ: Objection as to 3 form. 4 MR. KEOUGH: Could you read back 5 the last question, I didn't hear the end of the 6 question. 7 (Record read.) 8 MR. FERNANDEZ: In relation to the 9 vessels we're discussing here? These are pretty 10 broad statements that are being made and I don't 11 think you've asked him about the vessels that 12 we're looking at here. 13 MR. MALONEY: We'll get to it 14 vessel by vessel. 15 Q. The document at pages 101 and 102 16 is on O.W. Bunker's letterhead, but the document 17 from pages 103 to 107 is on Hapag-Lloyd's 18 letterhead. 19 Do you understand the reason for 20 the difference? 21 A. Because these negotiated terms and 22 conditions has been originally based upon our 23 terms and conditions. There was some 24 corrections made to bring this into an 25 acceptable version, which also could be accepted</p>	<p style="text-align: center;">Page 41</p> <p>1 Norbert Kock (1-19-16) 2 A. Yes. 3 Q. Do you know who owned that vessel 4 in 2014? 5 A. No. 6 Q. How does the order come into the 7 bunker purchasing department, is it communicated 8 to your department by the vessel? 9 MR. FERNANDEZ: Objection to the 10 form. 11 A. There is no order coming into our 12 department. There is a requisition coming from 13 the vessel into our department. 14 MR. MALONEY: Let's mark this 15 document as Exhibit 4, it's HPL-USOT page 131. 16 (Kock Exhibit 4, Document Bates 17 stamped HPL-USOT page 131, marked for 18 identification.) 19 Q. Have you seen this document before? 20 A. Yes. 21 Q. What is this document? 22 A. This is a requisition of the SANTA 23 ROBERTA for 3,000 tons of heavy fuel oil and 24 100 tons of diesel oil at the U.S. East Coast or 25 West Coast, I don't know, and Canada.</p>

<p style="text-align: right;">Page 42</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. This email is coming from the</p> <p>3 vessel --</p> <p>4 A. Sorry, sorry. For me this looks</p> <p>5 more than a pre-communication between the vessel</p> <p>6 and the vessel's stowage center, because these</p> <p>7 guys say, "Please note vessel intends to raise</p> <p>8 the requisition for 3,000 tons." So this has to</p> <p>9 be coordinated with the responsible stowage</p> <p>10 center.</p> <p>11 Q. Do you know any of the recipients</p> <p>12 on this email?</p> <p>13 A. Yep.</p> <p>14 Q. Who is Harry Moran?</p> <p>15 A. I don't know Harry, but the next</p> <p>16 address, Marine NONGA, this is TPA, at that time</p> <p>17 was the stowage center. I think Harry Moran was</p> <p>18 part of the team. The Marine NONGA was a big</p> <p>19 branch of a centralized email address of a big</p> <p>20 number of individuals, and just was putting</p> <p>21 Harry Moran up front of it to be sure that he is</p> <p>22 taking care to give his okay for 3,000 tons of</p> <p>23 fuel oil.</p> <p>24 Q. What does TPA stand for?</p> <p>25 A. Tampa. At that time this was the</p>	<p style="text-align: right;">Page 44</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 September 26, 2014 from the SANTA ROBERTA to</p> <p>3 RQMT-Section 4 and others?</p> <p>4 A. Yes.</p> <p>5 Q. Have you seen this email before?</p> <p>6 A. Yes.</p> <p>7 Q. What does this document refer to?</p> <p>8 A. This document refers to the bunker</p> <p>9 requisition form which should be attached to</p> <p>10 this email here.</p> <p>11 Q. On page 136, is that the bunker</p> <p>12 requisition form?</p> <p>13 A. Yes.</p> <p>14 Q. Is this a request from the vessels,</p> <p>15 the stem bunkers, at Tacoma, Washington?</p> <p>16 MR. FERNANDEZ: Objection to the</p> <p>17 form.</p> <p>18 A. This is a bunker requisition asking</p> <p>19 Hapag-Lloyd fuel purchasing to deliver the</p> <p>20 mentioned quantities and qualities.</p> <p>21 Q. Who is iocdo@nrcc.com in the cc</p> <p>22 line of this email?</p> <p>23 A. I don't know. It's not known to</p> <p>24 me. Maybe it's one of the owner's addresses,</p> <p>25 the owner of the vessel, because SANTA ROBERTA</p>
<p style="text-align: right;">Page 43</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 location where these guys were sitting.</p> <p>3 Q. Is NONGA an acronym, N-O-N-G-A?</p> <p>4 A. Yeah, but I can't explain it.</p> <p>5 Q. What is Fleet 4?</p> <p>6 A. Fleet 4 is also a -- possibly</p> <p>7 related to a stowage center, to another part. I</p> <p>8 can't really give a clear definition here</p> <p>9 because I do not have the codes really here they</p> <p>10 used at that time.</p> <p>11 Q. I have the same question about the</p> <p>12 other persons copied on this email?</p> <p>13 A. Vpillai, I don't know that.</p> <p>14 Michael Nigmann is known, he is one of the</p> <p>15 controlling guys in our company. Then we have</p> <p>16 the RQMT-Section 4 mailbox included, but this is</p> <p>17 more an informal message for these guys at that</p> <p>18 time.</p> <p>19 MR. MALONEY: Let's take a look at</p> <p>20 a document Bates labeled HPL-USOT page 135 and</p> <p>21 136.</p> <p>22 (Kock Exhibit 5, Document Bates</p> <p>23 stamped HPL-USOT 135 and HPL-USOT 136, marked</p> <p>24 for identification.)</p> <p>25 Q. This is an email dated</p>	<p style="text-align: right;">Page 45</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 is a charter vessel, or was a charter vessel at</p> <p>3 that time. It's an MSC vessel, we can see it on</p> <p>4 the email here above the vessel's name. We also</p> <p>5 can identify the email address, VP line is also</p> <p>6 MSC, so it's the owner, but the IOCDO email, I</p> <p>7 have no idea what this is.</p> <p>8 Q. What is "RQMT-Section 4"?</p> <p>9 A. This is the mailbox of our</p> <p>10 department for that bunker section.</p> <p>11 Q. Your bunker purchasing department?</p> <p>12 A. This is our purchasing department.</p> <p>13 We have a couple of mailboxes available, the</p> <p>14 service is divided.</p> <p>15 Q. Would you receive emails at this</p> <p>16 address?</p> <p>17 A. Pardon?</p> <p>18 Q. Would you receive emails at this</p> <p>19 RQMT address?</p> <p>20 A. Not me personally. This is an</p> <p>21 email address of one of our purchasing managers</p> <p>22 Q. Which person is that?</p> <p>23 A. I can't remember who was taking</p> <p>24 care for the section 4 in 2014.</p> <p>25 Q. Did section 4 --</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 A. I can remember Lukas Gaus was</p> <p>3 taking care of section 1 in that year. I can</p> <p>4 remember Mr. Doerner was taking care of section</p> <p>5 2. Ms. Niemeyer was taking care of section 3,</p> <p>6 I'm not really sure. So Mrs. Dubois should be</p> <p>7 responsible for section 4 at that time.</p> <p>8 Q. What's your level of confidence in</p> <p>9 that recollection?</p> <p>10 A. 75 percent.</p> <p>11 MR. KEOUGH: Object.</p> <p>12 MR. FERNANDEZ: Let's not speculate</p> <p>13 or guess, if you know something you know</p> <p>14 something. If you don't know you don't know.</p> <p>15 A. That's two years ago.</p> <p>16 Q. Would there be a document that</p> <p>17 would refer to which persons of your team were</p> <p>18 responsible for which sections?</p> <p>19 A. Yes.</p> <p>20 Q. Would that document be in your</p> <p>21 files back in Hamburg?</p> <p>22 A. Yes.</p> <p>23 Q. What did the sections relate to?</p> <p>24 Were they geographic designations?</p> <p>25 A. That's how it started. That's how</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes. 2013-2014.</p> <p>3 Q. Could you tell me just generally</p> <p>4 how were the sections reorganized?</p> <p>5 A. We came to the conclusion that it</p> <p>6 would not be longer feasible to just have the</p> <p>7 strict geographical limitation, but also to look</p> <p>8 more into the services. So there was a more</p> <p>9 service-oriented pattern brought forward.</p> <p>10 Q. What's the next step for the bunker</p> <p>11 purchasing department at Hapag-Lloyd after a</p> <p>12 bunker requisition form comes in from the</p> <p>13 vessel?</p> <p>14 A. To confirm it. To confirm the</p> <p>15 receipt of that document.</p> <p>16 Q. After the bunker purchasing</p> <p>17 department at Hapag-Lloyd confirms receipt of a</p> <p>18 bunker requisition form, what do members of your</p> <p>19 team do next?</p> <p>20 A. Next they are looking whether the</p> <p>21 requisition makes sense. Whether there are</p> <p>22 ports around this port which has been named</p> <p>23 here, Tacoma, on the vessel schedule which might</p> <p>24 be more economic to buy fuel oil, for example.</p> <p>25 Then to communicate with the vessel to check</p>
Page 47	Page 49
<p>1 Norbert Kock (1-19-16)</p> <p>2 it started. We had a strict geographically --</p> <p>3 THE INTERPRETER: Limitation.</p> <p>4 A. -- limitation that each section was</p> <p>5 taking care just for a specific geographic</p> <p>6 region. It started with section 1 responsible</p> <p>7 for U.S. and South Americas. Section 2</p> <p>8 responsible for North West Europe, section 3 was</p> <p>9 responsibilities for Asia Pacific area, and then</p> <p>10 we added at that time a section 4 responsible</p> <p>11 for the Mediterranean area, and also certain</p> <p>12 parts of the U.S.</p> <p>13 This was always handled also kind</p> <p>14 of flexible in case of somebody was going on</p> <p>15 vacation or being absent, on sick leave. Also,</p> <p>16 the discipline of the vessels, taking care to</p> <p>17 direct the emails into the correct requirement</p> <p>18 section was not 100 percent.</p> <p>19 Q. Was there a reorganization at a</p> <p>20 certain point as to these sections?</p> <p>21 A. Yes.</p> <p>22 Q. When was that?</p> <p>23 A. This was the hiring of Mrs. Dubois</p> <p>24 and Mr. Gaus.</p> <p>25 Q. So sometime in 2014?</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 whether it would be possible for the vessel to</p> <p>3 maybe go also to another port to buy it more</p> <p>4 economically.</p> <p>5 Q. Let's take a look at the next</p> <p>6 exhibit.</p> <p>7 (Kock Exhibit 6, Document Bates</p> <p>8 stamped HPL-USOT 137 and HPL-USOT 138, marked</p> <p>9 for identification.)</p> <p>10 Q. I'm handing you a document that's</p> <p>11 been marked as Exhibit 6, Bates labeled HPL-USOT</p> <p>12 137 and 138. Have you seen this document</p> <p>13 before?</p> <p>14 A. Yes.</p> <p>15 Q. What is this document?</p> <p>16 A. This is the confirmation of the</p> <p>17 responsible section manager, which was Lukas</p> <p>18 Gaus here at that time. That he received the</p> <p>19 vessel's requirement and that he would suggest</p> <p>20 to not only concentrate on Tacoma, but also do</p> <p>21 it for all those agents in Oakland with an</p> <p>22 inquiry.</p> <p>23 This is generally being done for</p> <p>24 all bunker requisitions coming from vessels to</p> <p>25 make sure the guys onboard know that we received</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 the requirement, otherwise they are not sure.</p> <p>3 They might be asking us or picking on us.</p> <p>4 (Kock Exhibit 7, Document Bates</p> <p>5 stamped HPL-USOT 139 and HPL-USOT 140, marked</p> <p>6 for identification.)</p> <p>7 Q. I'm handing you a document that</p> <p>8 we've marked as Exhibit 7, pages 139 to 140</p> <p>9 HPL-USOT 139 to 140.</p> <p>10 So after you've confirmed receipt</p> <p>11 of the bunker requisition, what is the next step</p> <p>12 for the bunker purchase department?</p> <p>13 A. To investigate the local markets to</p> <p>14 start a tender process, an inquiry.</p> <p>15 Q. The email that I've placed in front</p> <p>16 of you that's stamped pages 139 to 140, is that</p> <p>17 a tender or inquiry?</p> <p>18 A. Yes.</p> <p>19 Q. Is this an email blast to multiple</p> <p>20 participants?</p> <p>21 A. Pardon?</p> <p>22 Q. Is this an email that's sent out to</p> <p>23 your counterparties?</p> <p>24 A. Yes.</p> <p>25 Q. About how many counterparties did</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 no other -- at that time there was no other</p> <p>3 chance for us but to go to traders.</p> <p>4 Q. Would you have any preference to</p> <p>5 use O.W. Bunker as opposed to another trader?</p> <p>6 A. No.</p> <p>7 Q. Would your primary consideration be</p> <p>8 price or something else?</p> <p>9 A. Price is one of the considerations,</p> <p>10 yes, but also the product quality which is</p> <p>11 offered by the trader.</p> <p>12 (Kock Exhibit 8, Document Bates</p> <p>13 stamped HPL-USOT 144 to HPL-USOT 146, marked for</p> <p>14 identification.)</p> <p>15 Q. We have marked as the next exhibit,</p> <p>16 Exhibit 8, a document Bates labeled HPL-USOT 144</p> <p>17 to 146.</p> <p>18 This is an email chain between</p> <p>19 Mr. Gaus and Andre Maierhofer,</p> <p>20 M-a-i-e-r-h-o-f-e-r?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know Mr. Maierhofer?</p> <p>23 A. Yes.</p> <p>24 Q. Who is he?</p> <p>25 A. He is one of the salespersons of</p>
<p style="text-align: center;">Page 51</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 the bunker purchasing department have in 2014?</p> <p>3 A. In total?</p> <p>4 MR. FERNANDEZ: Objection to the</p> <p>5 form.</p> <p>6 Q. Was it more than ten?</p> <p>7 A. Yes, about 50; 40, 50.</p> <p>8 Q. Around the world?</p> <p>9 A. Yes.</p> <p>10 Q. Would Mr. Gaus send this to a</p> <p>11 selection of those counterparties only in the</p> <p>12 ports, the applicable ports?</p> <p>13 A. Yeah.</p> <p>14 MR. FERNANDEZ: Objection to the</p> <p>15 form.</p> <p>16 Q. After this inquiry is sent out,</p> <p>17 would the bunker purchasing department receive</p> <p>18 quotes for the supply?</p> <p>19 A. Yes.</p> <p>20 Q. Would that be from entities like</p> <p>21 the O.W. Bunker Group?</p> <p>22 A. Yes.</p> <p>23 Q. Anyone else?</p> <p>24 A. Traders. I mean specifically here</p> <p>25 for this region at the U.S. West Coast there's</p>	<p style="text-align: center;">Page 53</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Peninsula Petroleum.</p> <p>3 Q. What is Peninsula Petroleum?</p> <p>4 A. Peninsula Petroleum is a, in</p> <p>5 certain areas of the world a physical supplier,</p> <p>6 in other areas acting as a trader.</p> <p>7 Q. Were they in competition with O.W.</p> <p>8 Germany?</p> <p>9 A. Yes.</p> <p>10 Q. Were they providing a quote here to</p> <p>11 fuel the SANTA ROBERTA?</p> <p>12 A. Yes.</p> <p>13 Q. At the top of the email</p> <p>14 Mr. Maierhofer says, "Hi Lukas, any feedback on</p> <p>15 this one, are we in the ballpark?"</p> <p>16 Do you understand what he means by</p> <p>17 that sentence?</p> <p>18 A. He demanded for a feedback from</p> <p>19 Lukas Gaus whether his quotation is favorable or</p> <p>20 not that he possibly could --</p> <p>21 (Discussion between interpreter and</p> <p>22 the witness.)</p> <p>23 MR. KEOUGH: The witness is</p> <p>24 conferring with the interpreter and I'm not sure</p> <p>25 what's being discussed while the question is</p>

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<p>1 Norbert Kock (1-19-16) 2 pending. I would ask respectfully that the 3 witness speak on the record.</p> <p>4 If you need to use the interpreter 5 perhaps you could tell Mr. Maloney and they can 6 discuss it with your lawyer. I think the record 7 should -- to keep the record accurate we need to 8 have some order in that respect, if that's okay. 9 I'm sorry to interrupt.</p> <p>10 Q. Did you understand my question, 11 sir?</p> <p>12 A. Could you please ask your question 13 again?</p> <p>14 (Record read.)</p> <p>15 A. Yes. This was part of the 16 negotiation process between Lukas Gaus and 17 Andreas Maierhofer. Andreas Maierhofer offered 18 product and he wanted to get a feedback whether 19 the price levels and the product quality was 20 favorable for us or not.</p> <p>21 Q. Okay. Thank you. Did Peninsula 22 Petroleum get the contract for the supply to the 23 SANTA ROBERTA?</p> <p>24 A. No.</p> <p>25 MR. MALONEY: Let's take a look at</p>	<p>1 Norbert Kock (1-19-16) 2 sulfur content. This is the basic requirement 3 from us, to have this information.</p> <p>4 Q. Would there be additional 5 communications, other than by email, with 6 traders like O.W. Bunker?</p> <p>7 A. Yes.</p> <p>8 Q. What would those communications be?</p> <p>9 A. Telephone, it's telephone</p> <p>10 communications. Most of the negotiation stuff 11 was done by telephone. So if a seller cannot 12 reach the responsible purchaser he will write an 13 email.</p> <p>14 MR. MALONEY: We've been going for 15 about an hour and a half, would you like to take 16 a five-minute break?</p> <p>17 THE WITNESS: Yes.</p> <p>18 (Short recess taken.)</p> <p>19 BY MR. MALONEY:</p> <p>20 Q. We've been talking about the fuel 21 supply to the SANTA ROBERTA. Who received the 22 nomination for the fuel supply after the traders 23 put in their offers to the bunker purchasing 24 department of Hapag-Lloyd?</p> <p>25 MR. FERNANDEZ: Objection to the</p>
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<p>1 Norbert Kock (1-19-16) 2 a document I'll mark as Exhibit 9. 3 (Kock Exhibit 9, Document Bates 4 stamped HPL-USOT 142, marked for 5 identification.)</p> <p>6 MR. MALONEY: It's Bates labeled 7 HPL-USOT page 142.</p> <p>8 Q. This is an email from Karl Heinz 9 Selmer to Mr. Gaus. Have you seen this document 10 before?</p> <p>11 A. Yes.</p> <p>12 Q. What are typicals?</p> <p>13 A. Typicals are naming the 14 specifications of the fuel oil which are 15 allowing us to calculate the specific energy of 16 the offered product, and to see the ignition 17 purposes of the fuel oil.</p> <p>18 Q. Do you have an understanding what 19 Mr. Selmer is referring to under Tacoma, Oakland 20 and LA in this email?</p> <p>21 A. Yeah, he is mentioning the required 22 parameters to calculate the energy. He is 23 informing us about the product viscosity, the 24 API, which is the density of the product, the 25 weight, the water content, the ash content, the</p>	<p>1 Norbert Kock (1-19-16) 2 form.</p> <p>3 A. O.W. Germany.</p> <p>4 MR. MALONEY: I'm going to mark as 5 Exhibit 10 a document Bates labeled HPL-USOT 147 6 through 150.</p> <p>7 (Kock Exhibit 10, Document Bates 8 stamped HPL-USOT 147 through HPL-USOT 150, 9 marked for identification.)</p> <p>10 Q. Do you recognize this document, 11 sir?</p> <p>12 A. Yes.</p> <p>13 Q. What is this document?</p> <p>14 A. This is the formal order 15 confirmation sent by Mr. Karl Heinz Selmer to 16 Mr. Lukas Gaus, to confirm the order they had 17 received from us.</p> <p>18 Q. Page 148, the attachment to this 19 email, is this the sales order confirmation that 20 was sent from O.W. Bunker Germany to Hapag-Lloyd 21 AG?</p> <p>22 A. Yes.</p> <p>23 Q. The seller in this document is 24 listed as O.W. Bunker Germany GMBH?</p> <p>25 A. Yes.</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. And it's for the supply of fuel to</p> <p>3 the SANTA ROBERTA?</p> <p>4 A. The supplier has been mentioned as</p> <p>5 U.S. Oil. U.S. Oil has been mentioned as their</p> <p>6 physical supplier.</p> <p>7 Q. Did Hapag-Lloyd have any control</p> <p>8 over the selection of the physical supplier?</p> <p>9 A. No.</p> <p>10 Q. Did Hapag-Lloyd direct O.W. Germany</p> <p>11 to use U.S. Oil for the supply of fuel in</p> <p>12 Tacoma?</p> <p>13 A. No.</p> <p>14 Q. What is Norton Lilly?</p> <p>15 A. Norton Lilly is the local agency of</p> <p>16 Hapag-Lloyd in this area.</p> <p>17 Q. Can you explain what a port agent</p> <p>18 is?</p> <p>19 A. The agent is responsible to</p> <p>20 coordinate also bunker supplies or lubricant</p> <p>21 supplies between the local vendors and the</p> <p>22 vessel; and in case of fuel oil supplies also</p> <p>23 the engaged quality control, which is normally a</p> <p>24 bunker surveyor engaged by us.</p> <p>25 Q. Was there a bunker surveyor engaged</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 2007. This was a year when O.W. Bunker accepted</p> <p>3 our terms and conditions of 2006.</p> <p>4 What they are mentioning here is</p> <p>5 that they are delivering or that they will</p> <p>6 deliver based on our GTCs of 2007, but 2007 was</p> <p>7 the date of the signature. The date, the year</p> <p>8 of the start between the business relationship</p> <p>9 of Hapag-Lloyd and O.W. Bunker Germany.</p> <p>10 Q. Is it correct that Hapag-Lloyd had</p> <p>11 terms and conditions in 2007, a prior version</p> <p>12 from the document you reviewed earlier, or am I</p> <p>13 misunderstanding your response?</p> <p>14 A. The valid version at that time when</p> <p>15 the business connection was established was</p> <p>16 based on 2006. There's no version available</p> <p>17 from 2007.</p> <p>18 Q. Do you know whether the 2006</p> <p>19 version of the terms and conditions has been</p> <p>20 produced in this case?</p> <p>21 A. Yeah.</p> <p>22 MR. FERNANDEZ: It has.</p> <p>23 Q. This confirmation memorializes the</p> <p>24 agreement between O.W. Germany and Hapag for the</p> <p>25 purchase of fuel bunkers for the SANTA ROBERTA?</p>
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<p>1 Norbert Kock (1-19-16)</p> <p>2 in connection with this supply?</p> <p>3 A. Yes.</p> <p>4 Q. Who was that, if you recall?</p> <p>5 A. Oilttest.</p> <p>6 Q. Does a port agent such as Norton</p> <p>7 Lilly, or a bunker surveyor such as Oilttest, do</p> <p>8 they have any responsibility for purchasing</p> <p>9 fuel?</p> <p>10 A. No.</p> <p>11 Q. They are not authorized by</p> <p>12 Hapag-Lloyd to purchase fuel?</p> <p>13 A. No.</p> <p>14 Q. It's fair to say that they're</p> <p>15 involved in the logistics of coordinating the</p> <p>16 delivery after the order is placed?</p> <p>17 A. Yes.</p> <p>18 Q. Under remarks there's a designation</p> <p>19 that says "HALO GTC2007 shall apply." What does</p> <p>20 that mean?</p> <p>21 A. They are referring to an earlier</p> <p>22 accepted set of terms and conditions of</p> <p>23 Hapag-Lloyd, which has been created in 2006, but</p> <p>24 the business condition between O.W. Bunker</p> <p>25 Germany and Hapag-Lloyd were begun or started in</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. On page 149 there is a paragraph</p> <p>4 marked "Terms," and that reads that "the sale</p> <p>5 and delivery of the marine fuels described above</p> <p>6 are subject to the O.W. Bunker Group's terms and</p> <p>7 conditions of sale for marine bunkers," and it</p> <p>8 refers to Hapag-Lloyd as buyer and O.W. Bunker</p> <p>9 Germany as seller.</p> <p>10 What's your understanding of this</p> <p>11 paragraph?</p> <p>12 A. This is a -- this is a standard</p> <p>13 term in their pamphlet.</p> <p>14 Q. Did the O.W. Bunker Group's terms</p> <p>15 and conditions apply to this fuel transaction?</p> <p>16 A. No.</p> <p>17 Q. Is the basis for your statement the</p> <p>18 remarks that are listed on page 148?</p> <p>19 MR. FERNANDEZ: Objection to the</p> <p>20 form.</p> <p>21 A. In the sales order confirmation</p> <p>22 they confirmed that the Hapag-Lloyd terms and</p> <p>23 conditions shall apply.</p> <p>24 Q. Was it always the case that</p> <p>25 Hapag-Lloyd's terms and conditions applied to</p>

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<p>1 Norbert Kock (1-19-16) 2 agreements with O.W. Germany? 3 A. Yes. 4 Q. In every fuel transaction that you 5 conducted with them? 6 A. Yes. 7 Q. Were there ever any conflicts 8 between the Hapag-Lloyd Group's terms and 9 conditions and the O.W. Bunker Group's terms and 10 conditions? 11 A. Yes. 12 Q. Were there any disputes with O.W. 13 Germany about that? 14 MR. FERNANDEZ: Objection to the 15 form. 16 A. No, because our requirement when we 17 started the business relationship was to accept 18 our terms and conditions of purchasing. That's 19 the same with any other supplier working for us, 20 everybody has to accept our terms and conditions 21 for purchasing, otherwise we won't come into 22 business with these guys. 23 (Kock Exhibit 11, Document Bates 24 stamped HPL-USOT 151 through HPL-USOT 153 25 marked for identification.)</p>	<p>1 Norbert Kock (1-19-16) 2 system. 3 Q. So Mr. Gaus has to fill in the 4 information next to reference number, account, 5 seller in the middle of the page here on page 6 151? 7 A. Yes. 8 Q. The information about the local 9 physical supplier that would be used by O.W. 10 Germany, is that information that Mr. Gaus would 11 have received from Mr. Selmer? 12 A. Yes, and it's needed for logistical 13 reasons. 14 Q. Would this purchase order be 15 generated before or after the order was agreed? 16 A. The order agreement has taken place 17 during a telephone call, this is the normal way 18 we are purchasing; and then the written order 19 would be processed later on, it could be the 20 same day or it could be the next day depending 21 on what time the order is placed. 22 Q. On page 152 there are additional 23 provisions as to quality and quantity of the 24 fuel relating to a survey and sampling of the 25 fuel, do you see that?</p>
<p style="text-align: center;">Page 63</p> <p>1 Norbert Kock (1-19-16) 2 Q. What's been marked as Exhibit 11 is 3 a document labeled HPL-USOT 151 through 153. 4 it's an email from Mr. Gaus dated October 1, 5 2014. 6 Have you seen this email before? 7 A. Yes. 8 Q. What is this email? 9 A. This is our written order 10 confirmation to O.W. Bunker Germany. 11 Q. Is this order confirmation 12 automatically generated by your system? 13 A. Yes. 14 Q. Does Mr. Gaus have to fill in any 15 of the information? 16 A. Yes. 17 Q. How does it work? 18 A. It's an infrastructure available 19 showing all these different paragraphs here 20 which comes along with delivery, survey, 21 sampling, payment, invoicing; but the individual 22 order quantity, product quality, the estimated 23 date of arrival of the vessel, this has to be 24 included manually into this infrastructure. The 25 infrastructure we are working with is an SAP</p>	<p style="text-align: center;">Page 65</p> <p>1 Norbert Kock (1-19-16) 2 A. Um-hum. 3 Q. Those are obligations that O.W. 4 Germany took on? 5 A. This is a standard requirement of 6 Hapag-Lloyd. These procedures are standard 7 procedures from Hapag-Lloyd. Any vendor 8 supplier has to follow, or seller has to follow 9 these procedures. 10 Q. Do you know if Hapag-Lloyd made any 11 payment on the supply to O.W. to the SANTA 12 ROBERTA? 13 A. Yes. 14 Q. What's your understanding? 15 A. We make payment to the seller. 16 MR. MALONEY: Let me show you what 17 I will have marked as Exhibit 12. 18 (Kock Exhibit 12, Document Bates 19 stamped HPL-USOT 80, marked for identification.) 20 Q. This is a document Bates labeled 21 HPL-USOT 80. Have you seen this document 22 before? 23 A. Yes. 24 Q. What is this document? 25 A. This is the sales invoice of O.W.</p>

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<p>1 Norbert Kock (1-19-16) 2 Germany to Hapag-Lloyd. 3 Q. Do you see there that the date of 4 the invoice was October 9th of 2014? 5 A. Yes. 6 Q. With a due date of November 8, 7 2014? 8 A. Yes. 9 Q. This invoice was paid? 10 A. Yes. 11 Q. What is the box in the middle on 12 the top, it says October 20, 2014? 13 A. This is the booking date our 14 accounting department booked this invoice into 15 the system. Mrs. Sakowski is an employee at the 16 accounting department. 17 Q. There is some handwriting and there 18 is also a bar code on this version of the 19 document, I would like to take those marks one 20 at a time. 21 What's the handwriting in the upper 22 right-hand corner, if you know? 23 A. I don't know. 24 Q. In the middle right below the 25 accounting department's stamp, do you know what</p>	<p>1 Norbert Kock (1-19-16) 2 invoice and payment to that seller? 3 A. Yes. 4 MR. FERNANDEZ: Objection to the 5 form. 6 Q. Is there anything about the other 7 five transactions involving the SEASPAH HAMBURG, 8 the VIENNA EXPRESS, SOFIA EXPRESS, the DERBY D 9 or the SIDNEY EXPRESS that would be different 10 from the transaction we just reviewed relating 11 to the SANTA ROBERTA? 12 MR. FERNANDEZ: Objection to the 13 form. 14 MR. KEOUGH: Objection to the form. 15 A. If O.W. not had gone bust, no. 16 (Kock Exhibit 13, Document Bates 17 stamped HPL-USOT page 38, marked for 18 identification.) 19 Q. We have marked as Exhibit 13 a 20 document Bates labeled HPL-USOT 38. Have you 21 seen this document before? 22 A. Yes. 23 Q. Was this a document produced from 24 Hapag-Lloyd's own files? 25 A. No.</p>
<p style="text-align: center;">Page 67</p> <p>1 Norbert Kock (1-19-16) 2 this is? 3 A. This is the name of the team leader 4 of our accounting department, Mrs. Kargel. 5 THE INTERPRETER: K-a-r-g-e-l. 6 Q. Do you have an understanding of 7 what the bar code refer to? 8 A. This could be the invoicing system 9 at that time was read automatically into our SAP 10 system, and I think this bar code assisted the 11 system to read the invoice specifics, or the 12 invoice details. 13 Q. Do you have any understanding of 14 what the numbers refer to there? 15 A. No. That's a code. 16 Q. The handwritten numerals to the 17 left? 18 A. For me it looks like the euro U.S. 19 dollar cost at that time. 20 Q. If the O.W. Bunker Group had not 21 gone bankrupt in early November, would these 22 transactions as to these six vessels all have 23 taken place in the same manner, which is to say 24 bunker requisition form, offers to sellers, 25 nomination to a particular seller, delivery,</p>	<p style="text-align: center;">Page 69</p> <p>1 Norbert Kock (1-19-16) 2 Q. How did Hapag-Lloyd come into 3 possession of this document? 4 A. This has been shown to me during 5 the preparation of this event. 6 Q. Was that the first time you saw a 7 copy of this document? 8 A. Yeah. 9 Q. Did U.S. Oil Trading have an 10 account with Hapag-Lloyd? 11 A. No. 12 Q. And this is not an invoice that was 13 sent to Hapag-Lloyd? 14 A. No. 15 (Kock Exhibit 14, Document Bates 16 stamped HPL-USOT pages 170 and HPL-USOT 171, 17 marked for identification.) 18 Q. We have marked as Exhibit 14 a 19 document Bates labeled HPL-USOT pages 170 to 20 173. Have you seen this email and its 21 attachments before? 22 A. This is the confirmation of the 23 SANTA ROBERTA advising us about the received 24 fuel oil. 25 Q. And on page 172 what does this</p>

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<p>1 Norbert Kock (1-19-16) 2 attachment refer to? 3 A. This is a payment advice that 4 Hapag-Lloyd is going to pay the different 5 amounts for the different stamps to O.W. Bunker 6 Germany. 7 Q. Payment advice, is that what 8 Zahlungsbeleg refers to? 9 A. Yes. 10 MR. FERNANDEZ: Just note my 11 objection. You marked Exhibit 14 which is 12 numbered 170 through 173, I think that may have 13 been marked in error. You have 170 and 171 seem 14 to be standalone documents. Then 172 and 173 I 15 don't believe are affixed to the bunker delivery 16 note. You can certainly ask the witness that, 17 but please note my objection to the way this 18 exhibit has been marked. 19 MR. MALONEY: So noted. I agree 20 with your characterization, Mr. Fernandez. 21 Q. So is it the case, Mr. Kock, that 22 the bunker delivery note at page 171 is the 23 attachment to page 170? 24 A. Yes. 25 Q. And then the next pages 172 and 173</p>	<p>1 Norbert Kock (1-19-16) 2 dispute about the quantity or the quality of the 3 fuel listed on the bunker delivery note, who 4 would Hapag-Lloyd deal with as to that dispute? 5 A. The responsible purchaser. 6 Q. So is that O.W. Bunker Germany? 7 MR. FERNANDEZ: Could you reframe 8 the question please. 9 MR. MALONEY: Sure. 10 Q. So once the bunker purchasing 11 department receives a bunker delivery note, they 12 check the quantity and quality against the 13 original purchase order placed with the seller, 14 is that fair? 15 A. Yes. 16 Q. And if there were any disputes 17 would Hapag-Lloyd go to its seller to resolve 18 those? 19 A. Yes. 20 Q. In this case that would be O.W. 21 Bunker Germany? 22 A. Yes. 23 Q. Do you know if there were any such 24 disputes about this particular transaction? 25 A. I can't remember. I don't think</p>
<p>1 Norbert Kock (1-19-16) 2 refer to a separate document? 3 A. Yes. So this payment advice is 4 normally not going through our department. It's 5 done by our accounting department, and our 6 accounting department is sending it out to the 7 different vendors they are paying. 8 MR. FERNANDEZ: Are we able to 9 break these apart so the record is clear and 10 mark the two pages 14? 11 MR. MALONEY: I'm happy to mark 12 pages 172 and 173 as Exhibit 15. 13 MR. FERNANDEZ: Thank you. 14 (Kock Exhibit 15, Document Bates 15 stamped HPL-USOT 172 and HPL-USOT 173, marked 16 for identification.) 17 Q. Just to clear up the record. How 18 does the bunker purchasing department at 19 Hapag-Lloyd use the bunker delivery note that 20 was communicated to it here in Exhibit 14? 21 A. The quantity stated on the bunker 22 delivery note, the metric tons, will be booked 23 as a stop receipt into our SAP system against 24 the existing purchase order. 25 Q. If, for example, there was a</p>	<p>1 Norbert Kock (1-19-16) 2 there was a dispute here in this respect. 3 Q. Now turning to Exhibit 15 which is 4 Bates labeled HPL-USOT 172 to 173. It appears 5 there are seven separate fuel transactions with 6 different vessels, is that correct? 7 A. Yes. 8 Q. One of those vessels is the SANTA 9 ROBERTA? 10 A. Yes. 11 Q. This document reflects payment made 12 to O.W. Germany on the SANTA ROBERTA and other 13 transactions? 14 A. Yes. 15 Q. Would you mind translating for the 16 record what the German text reads after "ladies 17 and gentlemen"? 18 A. This is separate -- there is a 19 separate payment of the below mentioned items. 20 We did -- 21 THE INTERPRETER: On advisement of 22 the correctness. 23 A. Of the supplies. 24 THE INTERPRETER: Of the supplies 25 or.</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Or performance.</p> <p>3 THE INTERPRETER: Performance and</p> <p>4 its calculation.</p> <p>5 A. And its calculation we paid.</p> <p>6 Q. Who is Frau Bolgow?</p> <p>7 A. Frau Bolgow is a manager, a worker</p> <p>8 in the accounting department.</p> <p>9 Q. This document was dated</p> <p>10 November 6th of 2014?</p> <p>11 A. Yes.</p> <p>12 (Kock Exhibit 16, Document Bates</p> <p>13 stamped HPL-USOT 87 through HPL-USOT 89, marked</p> <p>14 for identification.)</p> <p>15 A. May I say something?</p> <p>16 Q. Absolutely.</p> <p>17 A. There is something wrong here</p> <p>18 because the attachments are Hapag-Lloyd's crew</p> <p>19 lists, and the first page here is referring to</p> <p>20 an invoice and bunker delivery note coming from</p> <p>21 O.W. Bunker Germany.</p> <p>22 Q. We've marked as Exhibit 16</p> <p>23 documents that have been Bates labeled HPL-USOT</p> <p>24 87 through 89. The witness has referenced that</p> <p>25 page 87 refers to an invoice and bunker delivery</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. No.</p> <p>3 Q. Do you know who owns the SEASPAN</p> <p>4 HAMBURG?</p> <p>5 A. SEASPAN, but SEASPAN is a -- I</p> <p>6 don't know where the SEASPAN is here. I can't</p> <p>7 confirm this.</p> <p>8 Q. Is this a document produced from</p> <p>9 Hapag-Lloyd's files?</p> <p>10 A. This is a document which is</p> <p>11 produced between our chartering department and</p> <p>12 the vessel's manager or owner. We are not</p> <p>13 involved in that business, or our department,</p> <p>14 our purchasing department is not involved in</p> <p>15 that business.</p> <p>16 Q. Do you see under line 37 of this</p> <p>17 document, on page 201, the passage that reads</p> <p>18 that the charterers shall provide and pay for</p> <p>19 all fuel and MDO, with certain exceptions stated</p> <p>20 there in the clause?</p> <p>21 A. I see it.</p> <p>22 Q. Do you have an understanding</p> <p>23 whether that was the case for the SEASPAN</p> <p>24 HAMBURG, that the Hapag-Lloyd was the</p> <p>25 responsible party for purchasing fuel?</p>
Page 75	Page 77
<p>1 Norbert Kock (1-19-16)</p> <p>2 note from O.W. Bunker Germany, but the following</p> <p>3 pages appear to refer to an unrelated document.</p> <p>4 MR. MALONEY: I would just ask</p> <p>5 counsel to follow up on whether the correct</p> <p>6 attachments have been produced at page 87.</p> <p>7 MR. FERNANDEZ: Okay.</p> <p>8 Q. I would like to turn to the SEASPAN</p> <p>9 HAMBURG.</p> <p>10 (Kock Exhibit 17, Document labeled</p> <p>11 "Time Charter," Bates stamped HPL-USOT 201 to</p> <p>12 HPL-USOT 205, marked for identification.)</p> <p>13 Q. Was the SEASPAN HAMBURG on time</p> <p>14 charter by Hapag-Lloyd in 2014?</p> <p>15 A. That's what the pamphlet says.</p> <p>16 It's a time charter contract.</p> <p>17 Q. We've marked as Exhibit 17 a</p> <p>18 document labeled "Time Charter," it's marked</p> <p>19 HPL-USOT pages 201 to 205.</p> <p>20 Is this the time charter for the</p> <p>21 SEASPAN HAMBURG?</p> <p>22 MR. KEOUGH: Objection to the form.</p> <p>23 MR. FERNANDEZ: Objection.</p> <p>24 Q. Have you seen this document before,</p> <p>25 sir?</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. That's the case?</p> <p>4 A. Yes.</p> <p>5 Q. Who would be the person in the</p> <p>6 chartering department responsible for</p> <p>7 negotiating that?</p> <p>8 A. Mr. Tim Petersen.</p> <p>9 Q. Tim Petersen?</p> <p>10 A. Tim Petersen, he was assigned</p> <p>11 together with his manager director, Mr. Glen</p> <p>12 Hards.</p> <p>13 Q. So you recognize those signatures</p> <p>14 there on page 205 as Mr. Petersen and Mr. Hards?</p> <p>15 A. Yes.</p> <p>16 (Kock Exhibit 18, Document Bates</p> <p>17 stamped HPL-USOT 90 through HPL-USOT 91, marked</p> <p>18 for identification.)</p> <p>19 Q. We've marked as Exhibit 18 a</p> <p>20 document Bates labeled HPL-USOT 90 through 91.</p> <p>21 Have you seen this document before?</p> <p>22 A. Yes.</p> <p>23 Q. What is this document?</p> <p>24 A. This is another bunker requisition</p> <p>25 form sent by the SEASPAN HAMBURG to our</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 department.</p> <p>3 Q. Does RQMT stand for requirement?</p> <p>4 A. Yes.</p> <p>5 Q. What is TIW in the subject line?</p> <p>6 A. This is the abbreviation of the</p> <p>7 port.</p> <p>8 Q. Tacoma Washington?</p> <p>9 A. This is a -- I think this is a</p> <p>10 code. This is a UN code -- no, this is not a UN</p> <p>11 code. For me this is a self-created</p> <p>12 abbreviation from the vessel.</p> <p>13 Q. Is there any physical supplier</p> <p>14 specified in this email or its attachment?</p> <p>15 A. No.</p> <p>16 (Kock Exhibit 19, Document Bates</p> <p>17 stamped HPL-USOT 92 through HPL-USOT 94, marked</p> <p>18 for identification.)</p> <p>19 Q. We've marked as Exhibit 192 emails</p> <p>20 and attachments that have been Bates labeled</p> <p>21 HPL-USOT 92, 93 and 94, and it appears that</p> <p>22 there are two emails and then a document behind</p> <p>23 that; is that fair to say?</p> <p>24 A. There's also some hiccup here I</p> <p>25 see, because the covering page is referring to</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. Page 94 is a separate document?</p> <p>4 A. Yes.</p> <p>5 Q. What does the heading mean on page</p> <p>6 94?</p> <p>7 A. This is a price comparence (sic)</p> <p>8 showing --</p> <p>9 Q. Is it a price comparison?</p> <p>10 A. The meaning here is</p> <p>11 Preisvereinbarungen.</p> <p>12 THE INTERPRETER: Agreement.</p> <p>13 A. Which means agreement.</p> <p>14 Q. It says for HFO and MDO?</p> <p>15 A. Yes.</p> <p>16 Q. What is HFO and MDO?</p> <p>17 A. HFO is heavy fuel, a heavy fuel</p> <p>18 oil, and MDO means marine distillate oil.</p> <p>19 Q. This chart refers to the vessel,</p> <p>20 the SEASPAN HAMBURG?</p> <p>21 A. Yes.</p> <p>22 Q. Who fills out a chart like this?</p> <p>23 A. The responsible purchaser.</p> <p>24 Q. This appears to be a document</p> <p>25 filled out by Karl Heinz Selmer, is that</p>
<p style="text-align: center;">Page 79</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 an inquiry Mr. Lukas Gaus placed into the market</p> <p>3 for this vessel calling for Tacoma, Oakland and</p> <p>4 Los Angeles in a row, and behind there is</p> <p>5 communication between Karl Heinz Selmer and O.W.</p> <p>6 Bunker and Lukas Gaus about the typical</p> <p>7 specifications of the ordered product, and</p> <p>8 another attachment referring to our price</p> <p>9 comparison we are doing.</p> <p>10 So the first page here has nothing</p> <p>11 to do with the attachments and behind. I would</p> <p>12 have expected here a copy of the inquiry from</p> <p>13 Mr. Lukas Gaus, like we had it for the previous</p> <p>14 vessel.</p> <p>15 Q. Noted.</p> <p>16 MR. FERNANDEZ: The top page, is</p> <p>17 that what you're referring to?</p> <p>18 A. This is the top page for our</p> <p>19 inquiry.</p> <p>20 Q. Page 92 refers to the inquiry that</p> <p>21 was sent into the marketplace by Hapag-Lloyd,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Then page 93, is that a response</p> <p>25 from O.W. Bunker Germany?</p>	<p style="text-align: center;">Page 81</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 correct?</p> <p>3 MR. KEOUGH: Objection.</p> <p>4 A. This document has been filled out</p> <p>5 by the responsible purchaser.</p> <p>6 Q. Who is the responsible purchaser?</p> <p>7 A. At that time it looks like Lukas</p> <p>8 Gaus was working on this vessel here, and he's</p> <p>9 using this piece of paper here to compare all</p> <p>10 the incoming orders to evaluate which offer is</p> <p>11 best, most favorable for Hapag-Lloyd.</p> <p>12 So I call it price comparence sheet</p> <p>13 because it's not an agreement. After we find an</p> <p>14 agreement here and it states with whom Mr. Gaus</p> <p>15 was making this agreement here, with O.W. Bunker</p> <p>16 Germany and Karl Heinz Selmer.</p> <p>17 Q. In the lower right, does that refer</p> <p>18 to the price that was agreed with O.W. Germany?</p> <p>19 A. In the lower right, the</p> <p>20 1.5 million?</p> <p>21 Q. Yes.</p> <p>22 A. This is the total, the total U.S.</p> <p>23 dollar order amount based on the order quantity</p> <p>24 multiplied with the price O.W. Bunker Germany</p> <p>25 gave us.</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. Do you know why O.W. Bunker is</p> <p>3 listed twice over there on the left, in the</p> <p>4 first column entitled "Anbieter"?</p> <p>5 MR. KEOUGH: Objection.</p> <p>6 A. Because they offered twice. They</p> <p>7 offered us \$520 in Oakland and they offered us</p> <p>8 \$523 in Tacoma. Although it looks like the \$523</p> <p>9 is more expensive than the other ones, we picked</p> <p>10 it because it was representing the highest</p> <p>11 energy contents.</p> <p>12 So for us it lowers energy costs,</p> <p>13 and also a very good ignition product, the CCAI</p> <p>14 value gives you some kind of knowledge about the</p> <p>15 ignition quality of the offered fuel oil, and</p> <p>16 825 is very good.</p> <p>17 Q. So because the fuel had a higher</p> <p>18 quality at a lower price O.W. Bunker got the</p> <p>19 nomination?</p> <p>20 A. Yes. You can see there's a column</p> <p>21 here under "Bestellkombination," there is the</p> <p>22 first column here.</p> <p>23 MR. KEOUGH: You can say it in</p> <p>24 English please.</p> <p>25 A. This is the total cost weighted on</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 offer. You can see it on the weighted U.S.</p> <p>3 dollar amount.</p> <p>4 Q. Do you know what is GEFO in the</p> <p>5 first column of the persons who offered?</p> <p>6 A. GEFO is a Hamburg-based trader, who</p> <p>7 is also working based on our terms and</p> <p>8 conditions. As any other parties here mentioned</p> <p>9 as well.</p> <p>10 Q. And Peninsula refers to Peninsula</p> <p>11 Petroleum?</p> <p>12 A. Yes.</p> <p>13 Q. This document is dated October 10,</p> <p>14 2014, is that correct?</p> <p>15 A. This was the date of the fixing</p> <p>16 here, right, October 10th.</p> <p>17 (Kock Exhibit 20, Document Bates</p> <p>18 stamped HPL-USOT 95 through HPL-USOT 98, marked</p> <p>19 for identification.)</p> <p>20 MR. FERNANDEZ: Off the record.</p> <p>21 (Off-the-record discussion held.)</p> <p>22 Q. We've marked as Exhibit 20 a</p> <p>23 document Bates labeled HPL-USOT 95 through 98.</p> <p>24 Have you seen this document before, sir?</p> <p>25 A. Yes.</p>
Page 83	Page 85
<p>1 Norbert Kock (1-19-16)</p> <p>2 energy contents.</p> <p>3 MR. KEOUGH: Which column are you</p> <p>4 referring to, sir?</p> <p>5 THE INTERPRETER: The one before</p> <p>6 last.</p> <p>7 MR. KEOUGH: Mr. Interpreter, since</p> <p>8 we haven't sworn you in yet --</p> <p>9 MR. MALONEY: He has been sworn.</p> <p>10 MR. KEOUGH: Okay. Please go</p> <p>11 ahead, sir.</p> <p>12 THE INTERPRETER: The one before</p> <p>13 last, it says IFO/MFO.</p> <p>14 THE INTERPRETER: The total cost by</p> <p>15 weight/energy.</p> <p>16 A. Sorry to correct you. It's not by</p> <p>17 weight, the energy is weighted in this cost</p> <p>18 here.</p> <p>19 THE INTERPRETER: Considered,</p> <p>20 listed weighted.</p> <p>21 A. No, weighted, because we do an</p> <p>22 energy calculation here. We have an Energlewert</p> <p>23 here also. This Energlewert will be weighted in</p> <p>24 the total cost. So this offer here, the second</p> <p>25 offer by O.W. was for us the most economic</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. What is this document?</p> <p>3 A. This is an order confirmation</p> <p>4 coming from O.W. Bunker Germany to Hapag-Lloyd</p> <p>5 confirming the bunker deal for the SEASPA</p> <p>6 HAMBURG at Tacoma.</p> <p>7 Q. Just like with the SANTA ROBERTA,</p> <p>8 O.W. Bunker Germany is the seller?</p> <p>9 A. Yes.</p> <p>10 Q. And Hapag-Lloyd AG is the buyer?</p> <p>11 A. Yes.</p> <p>12 Q. The same remarks "HALO GCT2007</p> <p>13 shall apply" are listed on page 96?</p> <p>14 A. Yes.</p> <p>15 Q. Norton Lilly is being used as a</p> <p>16 port agent?</p> <p>17 A. Right.</p> <p>18 Q. On page 95 Mr. Selmer writes to</p> <p>19 Mr. Gaus "Dear Lukas, thank you for your</p> <p>20 support."</p> <p>21 Do you have an understanding of</p> <p>22 what he means by that?</p> <p>23 A. To receive the offer. Sorry, to</p> <p>24 receive the order.</p> <p>25 (Kock Exhibit 21, Document Bates</p>

Page 86	Page 88
<p>1 Norbert Kock (1-19-16)</p> <p>2 stamped HPL-USOT pages 105 and HPL-USOT 106,</p> <p>3 marked for identification.)</p> <p>4 Q. We've marked as Exhibit 21 an email</p> <p>5 Bates stamped HPL-USOT pages 105 to 106. Have</p> <p>6 you seen this email before?</p> <p>7 A. Yes.</p> <p>8 Q. What is this email?</p> <p>9 A. This is an information back to the</p> <p>10 local agent, Norton Lilly, and the vessel, and</p> <p>11 the people in the stowage center, as well as to</p> <p>12 the bunker surveyor informing them about the</p> <p>13 done stem, that there will be 2,900 for the</p> <p>14 SEASPAR HAMBURG and at Tacoma to coordinate the</p> <p>15 supplier.</p> <p>16 (Kock Exhibit 22, Document Bates</p> <p>17 stamped HPL-USOT 113 and HPL-USOT 114, marked</p> <p>18 for identification.)</p> <p>19 Q. Marked as Exhibit 22 an email with</p> <p>20 attachment, Bates labeled HPL-USOT 113 and 114.</p> <p>21 Have you seen this document before?</p> <p>22 A. Yes.</p> <p>23 Q. What is this document?</p> <p>24 A. This is an email from the SEASPAR</p> <p>25 HAMBURG after sending to the responsible</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Manager, Master, Officers or crew or agents for</p> <p>3 the Owner Or Manager."</p> <p>4 Have you seen stamps like this</p> <p>5 before in the course of your work at</p> <p>6 Hapag-Lloyd?</p> <p>7 A. Occasionally.</p> <p>8 Q. What is the effect of a stamp like</p> <p>9 this?</p> <p>10 MR. KEOUGH: Objection.</p> <p>11 MR. FERNANDEZ: Objection.</p> <p>12 A. For our department, I don't see</p> <p>13 any.</p> <p>14 (Kock Exhibit 23, Document Bates</p> <p>15 stamped HPL-USOT 24, marked for identification.)</p> <p>16 Q. We have marked as Exhibit 23 a</p> <p>17 document Bates labeled HPL-USOT 24. Have you</p> <p>18 seen this document before?</p> <p>19 A. Yes.</p> <p>20 Q. What is this document?</p> <p>21 A. This is the invoice from O.W.</p> <p>22 Hamburg to Hapag-Lloyd for the supply of fuel</p> <p>23 oil at Tacoma.</p> <p>24 Q. The invoice from O.W. Germany to</p> <p>25 Hapag-Lloyd?</p>
Page 87	Page 89
<p>1 Norbert Kock (1-19-16)</p> <p>2 purchaser confirming the receipt of 2900 tons</p> <p>3 fuel oil at Tacoma on the 16th of October 2014.</p> <p>4 Q. This email went to the Hapag-Lloyd</p> <p>5 bunker purchasing department?</p> <p>6 A. Yes, as well as to the technical</p> <p>7 department. I think it might be a</p> <p>8 superintendent department of SEASPAR had been</p> <p>9 copied.</p> <p>10 Q. On the face of the page, on page</p> <p>11 114, what is the attachment?</p> <p>12 A. This is the attachment to that</p> <p>13 email.</p> <p>14 Q. Do you have any understanding of</p> <p>15 the large stamp marked "SEASPAR HAMBURG Bunker</p> <p>16 Receipt"?</p> <p>17 A. No, this stamp has not been created</p> <p>18 by our department. It looks like this stamp has</p> <p>19 been created by the vessel's owner or manager.</p> <p>20 Q. It reads that, "Bunkers are</p> <p>21 received onboard and taken into custody for and</p> <p>22 on behalf of Charterers only for the account of</p> <p>23 the Charterer. No lien" it's illegible for the</p> <p>24 next two words "or accountability for the supply</p> <p>25 and/or payment is accepted by the Owner or</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Right.</p> <p>3 Q. There are again some stamps on the</p> <p>4 invoice. Was this booked by Hapag-Lloyd's</p> <p>5 accounting department in October 28th of 2014?</p> <p>6 A. Yes. You like the name. It has</p> <p>7 been booked by the accounting manager,</p> <p>8 Mrs. Yaylaoglu. I think she's coming from</p> <p>9 Turkey.</p> <p>10 Q. Do you know whether this invoice</p> <p>11 was paid by Hapag-Lloyd to O.W. Germany?</p> <p>12 A. Yes.</p> <p>13 Q. Yes, it was paid?</p> <p>14 A. No. Wait. Due date November 15th.</p> <p>15 I strongly believe we have stopped it.</p> <p>16 Q. Ordinarily the terms of payment are</p> <p>17 within 30 days from the date of delivery listed</p> <p>18 there on the invoice?</p> <p>19 A. Right, providing the invoice is</p> <p>20 coming within 14 days or 15 days after supply.</p> <p>21 If not, we are paying 15 days after receipt of</p> <p>22 the invoice.</p> <p>23 MR. MALONEY: I think it's a good</p> <p>24 time for a lunch break.</p> <p>25 (Lunch recess taken at 12:54 p.m.)</p>

Page 90	Page 92
<p>1 Norbert Kock (1-19-16)</p> <p>2 (Resumed 1:48 p.m.)</p> <p>3 (Kock Exhibit 24, Document Bates</p> <p>4 stamped HPL-USOT 00115, marked for</p> <p>5 identification.)</p> <p>6 (Kock Exhibit 25, Document Bates</p> <p>7 stamped HPL-USOT pages 58 through HPL-USOT 60,</p> <p>8 marked for identification.)</p> <p>9 (Kock Exhibit 26, Document Bates</p> <p>10 stamped HPL-USOT pages 128 to HPL-USOT 129,</p> <p>11 marked for identification.)</p> <p>12 (Kock Exhibit 27, Document Bates</p> <p>13 stamped HPL-USOT page 78, marked for</p> <p>14 identification.)</p> <p>15 (Kock Exhibit 28, Document Bates</p> <p>16 stamped HPL-USOT 126, marked for</p> <p>17 identification.)</p> <p>18 (Kock Exhibit 29, Document Bates</p> <p>19 stamped HPL-USOT 189 to HPL-USOT 192, marked for</p> <p>20 identification.)</p> <p>21 (Kock Exhibit 30, Document Bates</p> <p>22 stamped, marked for identification.)</p> <p>23 (Kock Exhibit 31, Document Bates</p> <p>24 stamped HPL-USOT 199 through HPL-USOT 200,</p> <p>25 marked for identification.)</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I hand you a document that we've</p> <p>3 marked as Exhibit 25, it's labeled HPL-USOT</p> <p>4 pages 58 through 60.</p> <p>5 Have you seen this document before?</p> <p>6 A. Yes.</p> <p>7 Q. What is this document?</p> <p>8 A. This is the written purchase order</p> <p>9 to our product center at O.W. Bunker Germany</p> <p>10 GMBH.</p> <p>11 Q. Is this document generated in the</p> <p>12 ordinary course of Hapag-Lloyd's business?</p> <p>13 A. Yes.</p> <p>14 Q. Was it generated at or near the</p> <p>15 time that the order was placed?</p> <p>16 A. Yes.</p> <p>17 Q. Is it the regular practice of the</p> <p>18 bunker purchasing department to generate</p> <p>19 purchase orders such as these?</p> <p>20 A. Yes.</p> <p>21 Q. I'm handing you a document that</p> <p>22 I've marked as Exhibit 26, it's labeled HPL-USOT</p> <p>23 pages 128 to 129. Have you seen this document</p> <p>24 before?</p> <p>25 A. Yes.</p>
Page 91	Page 93
<p>1 Norbert Kock (1-19-16)</p> <p>2 MR. MALONEY: We're back from</p> <p>3 lunch.</p> <p>4 Q. I'm going to hand you a document</p> <p>5 marked as Kock Exhibit 24, document Bates</p> <p>6 labeled HPL-USOT 00115.</p> <p>7 Is this email and attachment from</p> <p>8 the SOFIA EXPRESS?</p> <p>9 A. Yes.</p> <p>10 Q. What does this document refer to?</p> <p>11 A. It's a bunker requisition for the</p> <p>12 Port of Tacoma on the 29th of October, coming</p> <p>13 from the vessel's master.</p> <p>14 Q. Do you know, was the SOFIA EXPRESS</p> <p>15 owned by Hapag-Lloyd?</p> <p>16 A. This is a Hapag-Lloyd vessel.</p> <p>17 Q. Was Hapag also operating that</p> <p>18 vessel?</p> <p>19 A. Yes.</p> <p>20 Q. In October of 2014?</p> <p>21 A. Yes.</p> <p>22 Q. This email went to the bunker</p> <p>23 purchasing department?</p> <p>24 A. Yes. To the requirement section,</p> <p>25 3.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. What is this document?</p> <p>3 A. This is the bunker receipt the</p> <p>4 SOFIA EXPRESS sent us after receiving the bunker</p> <p>5 replenishment at Tacoma on October 29, 2014.</p> <p>6 Q. The email is directed to Ship</p> <p>7 Management Fuel. What is Ship Management Fuel?</p> <p>8 A. Ship Management Fuel is our ship</p> <p>9 management department.</p> <p>10 Q. At Hapag-Lloyd?</p> <p>11 A. At Hapag-Lloyd.</p> <p>12 Q. Is that different from the bunker</p> <p>13 requirement department?</p> <p>14 A. It's a neighbor department of our</p> <p>15 purchasing department.</p> <p>16 Q. I'm going to hand you a document</p> <p>17 that I've marked as Exhibit 27, it's labeled</p> <p>18 HPL-USOT page 78.</p> <p>19 My question again is have you seen</p> <p>20 this document before?</p> <p>21 A. Yes.</p> <p>22 Q. And what is this document?</p> <p>23 A. This is an invoice issued by O.W.</p> <p>24 Bunker to Hapag-Lloyd AG for the supply of fuel</p> <p>25 oil in the Port of Tacoma to the SOFIA EXPRESS.</p>

Page 94	Page 96
<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. It's dated November 1st of 2014?</p> <p>3 A. Yes.</p> <p>4 Q. This copy is a little bit hard to</p> <p>5 read. Underneath the line items for quantity</p> <p>6 supplied and quality there's a notation that</p> <p>7 it's a "non-taxable delivery abroad."</p> <p>8 Do you have an understanding of</p> <p>9 what that means?</p> <p>10 A. No.</p> <p>11 Q. I can't read the handwriting on the</p> <p>12 right. Do you have any understanding of what</p> <p>13 that notation refers to?</p> <p>14 A. It looks like that a claim has been</p> <p>15 issued on this supplier and the payment, the</p> <p>16 normal payment run has been stopped due to this</p> <p>17 claim.</p> <p>18 Q. Are you referring to a claim with</p> <p>19 respect to the quantity or quality of fuel</p> <p>20 delivered, or something else?</p> <p>21 A. In this specific case I can't</p> <p>22 remember.</p> <p>23 Q. It's your understanding that this</p> <p>24 invoice has not been paid, correct?</p> <p>25 A. Yes.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 or liters or cubic meters, and if the product</p> <p>3 density is analyzed lighter than the given</p> <p>4 density on the bunker delivery receipt, you will</p> <p>5 calculate a loss to the shipowner because this</p> <p>6 is a pure commercial claim.</p> <p>7 Q. Would the bunker purchasing</p> <p>8 department ever send a claim like this to the</p> <p>9 local physical supplier?</p> <p>10 A. No. We have no relation to this</p> <p>11 physical supplier, we have no contract with</p> <p>12 them.</p> <p>13 Q. The information on page 127 details</p> <p>14 the claim that Ms. Niemeyer made?</p> <p>15 A. Yes. This is the fuel survey</p> <p>16 report we received from the attending surveyor</p> <p>17 who was at the scene witnessing the quantity</p> <p>18 determination onboard of the bunker barge, and</p> <p>19 witnessing also the sample drawing, and then</p> <p>20 arranging later on the analysis here.</p> <p>21 Q. Does the review of that email</p> <p>22 refresh your recollection as to whether that</p> <p>23 refers to the claim that's indicated on the</p> <p>24 invoice?</p> <p>25 A. It looks like, yes.</p>
Page 95	Page 97
<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I hand you a document that I've</p> <p>3 marked as Exhibit 28, Bates labeled HPL-USOT</p> <p>4 126. This is an email from Dorit Niemeyer to</p> <p>5 Mr. Selmer, dated November 5th of 2014, and the</p> <p>6 exhibit goes on to page 127 with its attachment.</p> <p>7 I'll just ask you to take a look at</p> <p>8 that document?</p> <p>9 A. Mrs. Niemeyer issued a claim.</p> <p>10 Q. Does this --</p> <p>11 A. Based on a different analyzed</p> <p>12 product density compared to the given density on</p> <p>13 the bunker delivery receipt, so we had a short</p> <p>14 delivery.</p> <p>15 Q. What is a short delivery?</p> <p>16 A. A product density, I mean, the</p> <p>17 delivered metric tons will be calculated based</p> <p>18 on a delivered volume, which has a delivery</p> <p>19 temperature and a specific product density.</p> <p>20 Based on these three items you can calculate</p> <p>21 metric tons which will be invoiced from a</p> <p>22 volume, because the bunker barge while alongside</p> <p>23 the vessel can be weighted.</p> <p>24 You cannot only do a volume</p> <p>25 measurement, you measure the barrels or gallons</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I'm going to hand you a document</p> <p>3 that I've marked as Exhibit 29, it's Bates</p> <p>4 labeled HPL-USOT 189 to 192.</p> <p>5 This is an email from Mr. Selmer to</p> <p>6 Ms. Niemeyer concerning the VIENNA EXPRESS. Do</p> <p>7 you see that?</p> <p>8 A. Yes.</p> <p>9 Q. The email is in German. Does it</p> <p>10 read, in sum and substance, "Thank you for the</p> <p>11 nomination. Have a beautiful sunny day"?</p> <p>12 A. Right.</p> <p>13 Q. Does this email attach the sales</p> <p>14 order confirmation between Hapag-Lloyd and O.W.</p> <p>15 Germany?</p> <p>16 A. Yes.</p> <p>17 Q. O.W. Germany got the nomination for</p> <p>18 the VIENNA EXPRESS?</p> <p>19 A. Yes.</p> <p>20 Q. O.W. Germany is listed here as the</p> <p>21 seller on the transaction?</p> <p>22 A. Yes.</p> <p>23 Q. The payment terms and terms and</p> <p>24 conditions remarks are the same as the previous</p> <p>25 transactions we've reviewed?</p>

Page 98	Page 100
<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. I hand you a document that I've</p> <p>4 marked as Exhibit 30, Bates labeled HPL-USOT</p> <p>5 pages 182 to 184. Have you seen this document</p> <p>6 before?</p> <p>7 A. Yes.</p> <p>8 Q. What is this document?</p> <p>9 A. This is the official written order</p> <p>10 from Hapag-Lloyd to O.W. Bunker Germany</p> <p>11 confirming the order for VIENNA EXPRESS,</p> <p>12 2,700 tons of fuel oil at the Port of Tacoma on</p> <p>13 October 16, 2014.</p> <p>14 Q. I hand you a document that I've</p> <p>15 marked as Exhibit 31, Bates labeled HPL-USOT 199</p> <p>16 through 200.</p> <p>17 Do you know who Victoria Bohn is?</p> <p>18 A. I don't know Victoria Bohn. It</p> <p>19 looks like she's working in or she worked at the</p> <p>20 O.W. Bunker Hamburg department for issuing</p> <p>21 invoices, though she's addressing this mail here</p> <p>22 to our accounting department, Mrs. Sakowski:</p> <p>23 "Good morning, Mrs. Sakowski.</p> <p>24 Attached you received invoice and delivery note</p> <p>25 for the bunker delivery of VIENNA EXPRESS in</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 record.</p> <p>3 (Off the record.)</p> <p>4 (Exhibit 33, Hapag-Lloyd Terms and</p> <p>5 Conditions of Purchasing, Bates stamped HPL-OMS</p> <p>6 1 through HPL-USOT 5, marked for</p> <p>7 identification.)</p> <p>8 (Exhibit 34, Email and attachments</p> <p>9 Bates stamped HPL-OMS 00057 through HPL-OMS</p> <p>10 00058, marked for identification.)</p> <p>11 (Exhibit 35, Document Bates stamped</p> <p>12 ING HL 2718 through ING HL 20, marked for</p> <p>13 identification.)</p> <p>14 (Exhibit 36, Document Bates stamped</p> <p>15 HPL-OMS 28 through HPL-OMS 30, marked for</p> <p>16 identification.)</p> <p>17 (Exhibit 37, Document Bates stamped</p> <p>18 ING HL 32 and ING HL 33, marked for</p> <p>19 identification.)</p> <p>20 (Exhibit 38, Document Bates stamped</p> <p>21 HPL-OMS 63 through HPL-OMS 69, marked for</p> <p>22 identification.)</p> <p>23 (Exhibit 39, Document Bates stamped</p> <p>24 HPL-OMS 42 and HPL-OMS 43, marked for</p> <p>25 identification.)</p>
<p style="text-align: center;">Page 99</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Tacoma on October 18, 2014. The original</p> <p>3 documents will follow by courier."</p> <p>4 Q. The attachment to this email on</p> <p>5 page 200, is that the invoice from O.W. Germany</p> <p>6 to Hapag-Lloyd?</p> <p>7 A. Yes.</p> <p>8 Q. Again, it was booked on October 29,</p> <p>9 2014 by Hapag-Lloyd's accounting department?</p> <p>10 A. Yes.</p> <p>11 Q. This invoice also was not paid?</p> <p>12 A. Not paid, the security was issued.</p> <p>13 (Kock Exhibit 32, Document Bates</p> <p>14 stamped HPL-USOT 197 to HPL-USOT 198, marked for</p> <p>15 identification.)</p> <p>16 Q. We have marked as Exhibit 32 a</p> <p>17 document Bates labeled HPL-USOT 197 to 198.</p> <p>18 Have you seen this document before, sir?</p> <p>19 A. Yes.</p> <p>20 Q. What is this document?</p> <p>21 A. This is an email to our requirement</p> <p>22 section 3, as well as to our ship management</p> <p>23 department, confirming the bunker delivery at</p> <p>24 Tacoma on 18/10/2014.</p> <p>25 MR. MALONEY: Let's go off the</p>	<p style="text-align: center;">Page 101</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 MR. MALONEY: We've taken a short</p> <p>3 break just to get some additional documents</p> <p>4 marked, and we're going to turn now to the</p> <p>5 SIDNEY EXPRESS and DERBY D.</p> <p>6 Q. I'm handing you a document, sir,</p> <p>7 that I've marked as Exhibit 33, it's HPL-OMS</p> <p>8 pages 1 through 5. Do you recognize this</p> <p>9 document?</p> <p>10 A. This is a set of Hapag-Lloyd Terms</p> <p>11 and Conditions of Purchasing.</p> <p>12 Q. This was produced in connection</p> <p>13 with the O'Rourke Marine Services action, case</p> <p>14 number 14-cv-10027.</p> <p>15 Do you have any understanding of</p> <p>16 whether there were different terms and</p> <p>17 conditions that applied to the SIDNEY EXPRESS</p> <p>18 and the DERBY D as to the other four vessels we</p> <p>19 have just reviewed?</p> <p>20 A. No.</p> <p>21 Q. What is your understanding?</p> <p>22 A. We had a set of terms and</p> <p>23 conditions negotiated with O.W. Bunker for the</p> <p>24 supply of fuel oil and distillates in Rotterdam</p> <p>25 and Antwerp in the late 2013, which was also</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 securance (sic) has been issued.</p> <p>3 Q. Security has been issued in the</p> <p>4 court in these actions?</p> <p>5 A. Yes.</p> <p>6 Q. Was the DERBY D a vessel that was</p> <p>7 owned by Hapag-Lloyd or chartered, on charter to</p> <p>8 Hapag?</p> <p>9 A. This was a charter to Hapag-Lloyd.</p> <p>10 Q. Do you know who owned the DERBY D</p> <p>11 in 2014?</p> <p>12 A. No.</p> <p>13 Q. Do you know whether the charter was</p> <p>14 governed by a Charter Party?</p> <p>15 A. It must be governed by a Charter</p> <p>16 Party, because a Charter Party is a contract</p> <p>17 between the vessel's owner and the charterer.</p> <p>18 Q. I show you a document that I have</p> <p>19 marked as Exhibit 38, it's labeled HPL-OMS 63</p> <p>20 through 69.</p> <p>21 MR. MALONEY: I'll note for the</p> <p>22 record that there is a designation, an entire</p> <p>23 Bates stamped document number HPL-OMS 63 through</p> <p>24 122 is hereby deemed confidential.</p> <p>25 MR. DEHART: Under the terms of the</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 not our department's business, so I'm not in</p> <p>3 that stuff.</p> <p>4 Q. On page 64 at line 39, is it fair</p> <p>5 to say that the charterers were responsible for</p> <p>6 the purchasing of fuel while it was on charter?</p> <p>7 A. Based on this definition here in</p> <p>8 this contract, yes.</p> <p>9 MR. FERNANDEZ: Objection to --</p> <p>10 just objection.</p> <p>11 Q. I'm going to hand you a document</p> <p>12 that I've marked as Exhibit 39, and it's labeled</p> <p>13 HPL-OMS pages 42 and 43. Have you seen this</p> <p>14 document before?</p> <p>15 A. Yes.</p> <p>16 Q. Is this another inquiry to the</p> <p>17 market?</p> <p>18 A. Yes.</p> <p>19 Q. None of the recipients are</p> <p>20 identified. Is there a reason why these</p> <p>21 inquiries are sent without a listing of who is</p> <p>22 to receive them?</p> <p>23 A. Yeah. The recipients will be only</p> <p>24 blank carbon copied to not allow them who is</p> <p>25 participating in this inquiry.</p>
<p style="text-align: center;">Page 107</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 confidentiality agreement it applies to all</p> <p>3 these actions?</p> <p>4 Q. Have you seen this document before,</p> <p>5 sir?</p> <p>6 A. I can't remember.</p> <p>7 Q. Is this a document that would have</p> <p>8 been negotiated by your chartering department?</p> <p>9 A. Yes.</p> <p>10 Q. There on page 69, the last page of</p> <p>11 the document, are those Mr. Petersen and</p> <p>12 Mr. Hards' signatures?</p> <p>13 A. Yes.</p> <p>14 Q. Did you know or do you know who</p> <p>15 owns the DERBY D?</p> <p>16 A. No.</p> <p>17 Q. On page 1 of this document it says</p> <p>18 the Charter Party was made and concluded in</p> <p>19 Hamburg between Containers Lines Inc., Monrovia,</p> <p>20 and Hapag-Lloyd.</p> <p>21 Do you have any reason to doubt</p> <p>22 whether Containers Lines Inc. are the owners of</p> <p>23 this vessel, the DERBY D?</p> <p>24 MR. FERNANDEZ: Objection.</p> <p>25 A. This is not our business. This is</p>	<p style="text-align: center;">Page 109</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. To not --</p> <p>3 A. We are not interested to allow them</p> <p>4 to know who is competing to maybe contact each</p> <p>5 other to manipulate prices.</p> <p>6 Q. There's no reference to any local</p> <p>7 physical suppliers on page 42 and 43, is there?</p> <p>8 A. No.</p> <p>9 Q. Do you know if this inquiry was</p> <p>10 sent directly to O'Rourke Marine Services?</p> <p>11 A. This inquiry has not been sent to</p> <p>12 O'Rourke.</p> <p>13 Q. Did Hapag-Lloyd have any</p> <p>14 relationship with O'Rourke Marine Services</p> <p>15 directly?</p> <p>16 A. No, no relationship directly. We</p> <p>17 only have relationship to sellers accepting our</p> <p>18 terms and conditions of purchasing.</p> <p>19 Q. O.W. Germany accepted Hapag-Lloyd's</p> <p>20 terms and conditions?</p> <p>21 A. Yes.</p> <p>22 Q. Did U.S. Oil Trading accept</p> <p>23 Hapag-Lloyd's terms and conditions?</p> <p>24 MR. KEOUGH: Objection.</p> <p>25 A. We had no contact with these guys.</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. Did O'Rourke Marine Services accept</p> <p>3 the terms and conditions?</p> <p>4 A. We had no direct contact to this</p> <p>5 company.</p> <p>6 Q. You can put that aside.</p> <p>7 (Kock Exhibit 40, Document Bates</p> <p>8 stamped HPL-OMS 21 through HPL-OMS 22, marked</p> <p>9 for identification.)</p> <p>10 Q. I have marked as Exhibit 40 a</p> <p>11 document labeled HPL-OMS pages 21 through 22.</p> <p>12 Do you recognize this document?</p> <p>13 A. Yes.</p> <p>14 Q. What is it?</p> <p>15 A. This is a sales order confirmation</p> <p>16 coming from O.W. Bunker Germany confirming the</p> <p>17 sale of 50 tons of marine gas oil, 0.1 percent</p> <p>18 sulfur, at the Port of Houston, delivery on</p> <p>19 November 5, 2014.</p> <p>20 Q. And again, the seller is O.W.</p> <p>21 Bunker Germany in this document?</p> <p>22 A. Yes.</p> <p>23 Q. And the purchaser is Hapag-Lloyd</p> <p>24 AG?</p> <p>25 A. Yes.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I've marked as Exhibit 41 a</p> <p>3 document labeled HPL-OMS pages 18 through 20.</p> <p>4 Have you seen this document before?</p> <p>5 A. Yes.</p> <p>6 Q. What is this document?</p> <p>7 A. This is a written order from</p> <p>8 Hapag-Lloyd, Mr. Lukas Gaus, to O.W. Bunker</p> <p>9 Germany GMBH, confirming the purchase of 50 tons</p> <p>10 of marine distillate DMA 0.1 percent sulfur at</p> <p>11 the Port of Houston, delivery to take place on</p> <p>12 November 5, 2014.</p> <p>13 Q. Do you see in the second paragraph</p> <p>14 it says that "All fuel delivered to Hapag-Lloyd</p> <p>15 AG as well as to Hapag-Lloyd Kreuzfahrten ISO</p> <p>16 8217 Fourth Edition 2010," it says 2010(E)?</p> <p>17 A. Right.</p> <p>18 Q. Is it the 2010(E) quality standard</p> <p>19 that applies to this transaction?</p> <p>20 A. This is a standard text in this</p> <p>21 contract. In this case the purchaser did not</p> <p>22 correct down to 2005 spec that O.W. was</p> <p>23 confirming to us.</p> <p>24 Q. So would the sales order</p> <p>25 confirmation govern that question?</p>
<p style="text-align: center;">Page 111</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. Under your remarks it says "HALO</p> <p>3 GTC2005(E) shall apply"?</p> <p>4 A. It looks like a typo to me.</p> <p>5 Q. Why do you say that?</p> <p>6 A. Because in all previous order</p> <p>7 confirmations were relating to the GTCs of 2007,</p> <p>8 which was in fact 2006.</p> <p>9 Q. That was when the relationship with</p> <p>10 O.W. Bunker Germany commenced?</p> <p>11 A. Yes.</p> <p>12 Q. The line above says "All per ISO</p> <p>13 8217 2005(E)." Is it possible that someone</p> <p>14 transposed the quality standard and the terms</p> <p>15 and conditions?</p> <p>16 A. It looks like because the E is --</p> <p>17 THE INTERPRETER: In parentheses.</p> <p>18 A. Yeah.</p> <p>19 Q. Does the quality standard</p> <p>20 designation look correct to you?</p> <p>21 A. Yes. The ISO 8217 2005 exists,</p> <p>22 it's an old version.</p> <p>23 (Kock Exhibit 41, Document Bates</p> <p>24 stamped HPL-OMS 18 through HPL-OMS 20, marked</p> <p>25 for identification.)</p>	<p style="text-align: center;">Page 113</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. Because this document is</p> <p>4 automatically generated by Hapag-Lloyd's</p> <p>5 systems?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know how many physical</p> <p>8 suppliers are based in Houston, Texas, physical</p> <p>9 suppliers of fuel?</p> <p>10 A. No.</p> <p>11 (Kock Exhibit 42, Document Bates</p> <p>12 stamped HPL-OMS page 45, marked for</p> <p>13 identification.)</p> <p>14 Q. Marked as Exhibit 42 a document</p> <p>15 labeled HPL-OMS page 45. Have you seen this</p> <p>16 document before?</p> <p>17 A. Yes.</p> <p>18 Q. And do you know what it refers to?</p> <p>19 A. It refers to the delivery of the</p> <p>20 order of Mr. Jonas Hanke to O.W. Germany for</p> <p>21 arrange to supply of marine distillates to the</p> <p>22 DERBY D in Houston on November 5th.</p> <p>23 I think this is the covering email</p> <p>24 here to that document number 40 we discussed</p> <p>25 earlier. This is a covering email here for the</p>

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<p>1 Norbert Kock (1-19-16) 2 order confirmation for the Exhibit Number 40. 3 Q. What you're saying is that the 4 second email below in this email chain from 5 Mr. Selmer refers to a sales order confirmation, 6 and that sales order confirmation appears to be 7 the document we've marked as Exhibit 40? 8 A. Yeah, because also this says order 9 number of O.W. similar. They are referring to 10 the sales order confirmation number 1980-28364, 11 which is similar to this one here. 12 Q. So it's your testimony that the 13 sales order number on Exhibit 40 is 119-28364? 14 A. Yes. 15 Q. The sales order confirmation number 16 on Exhibit 42 also refers to number 119-283364? 17 A. Yes. 18 Q. Mr. Selmer writes to Mr. Hanke 19 "supply by truck, do you know what that refers 20 to"? 21 A. To the supply of the ordered 22 50 metric tons of marine distillates or marine 23 gas oil at Houston. So the supply has been 24 arranged by tank trucks and not by barge. 25 Q. Hapag-Lloyd also received an</p>	<p>1 Norbert Kock (1-19-16) 2 A. It was the beginning of November 3 when it was in the newspaper. 4 Q. What do you remember about that? 5 A. That we received a newspaper 6 article announcing that there will be trouble, 7 they might have problems to maintain supplies. 8 That's when we contacted O.W. Germany and there 9 it was they sold the assets of Singapore, the 10 Singapore products company. 11 Q. Did you have a call with someone at 12 O.W. Germany? 13 A. We tried to make several calls with 14 O.W. Germany, but it was difficult at that time 15 to get through to reach somebody giving us clear 16 information. 17 Q. Did you have at least one 18 discussion with them where they discussed 19 Singapore? 20 A. This was not kind enough of a 21 discussion, it was always a very fast speak 22 because they were not really involved also in 23 Hamburg, they had problems to really disclose or 24 explain what's going on. 25 Q. What happened next?</p>
<p style="text-align: center;">Page 115</p> <p>1 Norbert Kock (1-19-16) 2 invoice for this supply from O.W. Germany, is 3 that right? 4 A. Yes. 5 (Kock Exhibit 43, Document Bates 6 stamped ING HL 270015, marked for 7 identification.) 8 Q. I would like to hand you a document 9 that we've marked as Exhibit 43 labeled ING HL 10 270015. Are you familiar with this document? 11 A. No. No. I can't remember. 12 Q. This document is not from 13 Hapag-Lloyd's files, is it? It was produced by 14 ING Bank N.V.. 15 A. I don't know. This looks strange 16 to me because of that Danish stamp here, 17 "BOGFORT." I've never seen this before, I can't 18 remember. 19 Q. Okay. You can put that aside. Do 20 you know whether O.W. Germany was paid for the 21 fuel supplied to the DERBY D? 22 A. No, I don't know. 23 Q. When did you become aware that O.W. 24 Germany, or the O.W. Bunker Group, was 25 experiencing any financial distress?</p>	<p style="text-align: center;">Page 117</p> <p>1 Norbert Kock (1-19-16) 2 A. We stopped, we stopped paying 3 invoices and we tried to, because we understand 4 at that time that they were no longer able to 5 deliver also our contracts in Rotterdam and 6 Antwerp, so we immediately tried to find other 7 sellers to deliver instead. 8 Q. Did you receive any communications 9 from local physical suppliers? 10 MR. FERNANDEZ: Objection. 11 A. I can't remember. 12 Q. Did you receive any threats to 13 arrest vessels owned or chartered by 14 Hapag-Lloyd? 15 A. Could you please repeat it? 16 Q. Did Hapag-Lloyd receive any threats 17 to arrest vessels owned or chartered by 18 Hapag-Lloyd after the insolvency? 19 MR. FERNANDEZ: Objection. 20 A. At that time, no, I can't remember. 21 It was later. 22 Q. Did you receive any communications 23 later from local physical suppliers in that 24 vein? 25 A. Later on we had demands from</p>

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<p>1 Norbert Kock (1-19-16) 2 physical suppliers in Antwerp and Rotterdam. 3 Q. Only in Rotterdam and Antwerp or 4 elsewhere as well? 5 MR. FERNANDEZ: Objection. 6 A. There was a lot of communication 7 going on at that time, I do not have this exact 8 amount of communication now, I can't remember 9 it. It's in the records, but I can't remember 10 it. 11 Q. How about with respect to the cases 12 that you're appearing for here today, did you 13 have any communications with O'Rourke Marine 14 Services after the bankruptcy of the O.W. Bunker 15 Group? 16 MR. FERNANDEZ: Objection. 17 A. I can't remember. 18 Q. The same question for U.S. Oil 19 Trading. Did Hapag-Lloyd have any 20 communications with U.S. Oil Trading after the 21 bankruptcy of the O.W. Bunker Group? 22 MR. FERNANDEZ: Objection. 23 A. It could be done via our legal or 24 insurance department. 25 Q. To your knowledge, no one in the</p>	<p>1 Norbert Kock (1-19-16) 2 (Kock Exhibit 44, Notice of Rule 3 30(b)(6) Deposition, marked for identification.) 4 (Kock Exhibit 45, Notice of Rule 5 30(b)(6) Deposition, marked for identification.) 6 (Kock Exhibit 46, First Amended 7 Complaint For Interpleader and Declaratory 8 Judgment, marked for identification.) 9 (Kock Exhibit 47, Declaration of 10 Norbert Kock, marked for identification.) 11 EXAMINATION BY MR. HEILIG: 12 Q. Good afternoon, sir. My name is 13 Justin Heilig. I represent O.W. Bunker Germany 14 in three of the actions pending in New York 15 which involve the vessels VIENNA EXPRESS, SOFIA 16 EXPRESS, the SANTA ROBERTA, SEASPAH HAMBURG, as 17 well as the SIDNEY EXPRESS and the DERBY D. 18 Please note that when I refer to 19 the vessels, plural, I'm referring to those six 20 specific vessels unless otherwise noted, okay? 21 A. Okay. 22 Q. When I refer to the bunker 23 transactions I'm speaking about the supply of 24 bunker fuel to those six vessels in October of 25 2014, okay?</p>
<p style="text-align: center;">Page 119</p> <p>1 Norbert Kock (1-19-16) 2 bunker purchasing department received 3 communications from U.S. Oil Trading or O'Rourke 4 Marine Services after the insolvency of the O.W. 5 Bunker Group in early November 2014? 6 MR. FERNANDEZ: Objection. 7 MR. KEOUGH: Objection. 8 A. I don't remember. 9 Q. So you have no recollection 10 whatsoever of any communications with either 11 O'Rourke Marine or U.S. Oil Trading after the 12 bankruptcy, is that your testimony? 13 MR. FERNANDEZ: Objection. 14 A. I would have been or I should have 15 been able to look at my records because maybe 16 there's something in it if it had been passed to 17 our legal department, our insurance department 18 to take care of that. 19 MR. MALONEY: Those are all the 20 questions that I have for you at this time, 21 Mr. Kock. Thank you for your time and I'll pass 22 the witness. 23 (Short recess taken.) 24 MR. HEILIG: Mark these as the next 25 exhibits.</p>	<p style="text-align: center;">Page 121</p> <p>1 Norbert Kock (1-19-16) 2 A. Okay. 3 Q. When I refer to USOT I'm referring 4 to U.S. Oil Trading, one of the parties to two 5 of those actions. When I refer to OMS I'm 6 speaking about O'Rourke Marine Services, a party 7 to one of those actions, all right? 8 A. Um-hum. 9 Q. We've been discussing those names 10 and vessels throughout the day today, so you 11 should already be familiar with them. 12 First let me thank you for coming 13 all this way from Hamburg to testify today, we 14 appreciate it. I'm going to first have you look 15 at documents that have been marked as exhibits 16 44 and 45, they are the notices of deposition 17 issued by O.W. Germany in these actions. 18 Sir, have you seen these documents 19 before today? 20 A. I'm not sure. 21 Q. Do you understand that you've been 22 designation by Hapag-Lloyd as the corporate 23 representative to testify about the topics 24 listed in Annex A of both notices? 25 A. Yes.</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. You can put them aside, we're done</p> <p>3 with them. Earlier I believe you testified that</p> <p>4 Hapag-Lloyd began doing business with O.W.</p> <p>5 Germany in 2007, is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. So Hapag didn't have any dealings</p> <p>8 with O.W. Germany before 2007?</p> <p>9 A. No.</p> <p>10 Q. Was Hapag aware of O.W. Germany's</p> <p>11 presence in the market before 2007?</p> <p>12 A. Yes.</p> <p>13 Q. Is there a reason why you didn't do</p> <p>14 business with O.W. Germany before that time?</p> <p>15 A. Before that time we've done no</p> <p>16 business with O.W. because the reputation of</p> <p>17 O.W. was a poor reputation in the local market.</p> <p>18 Q. Okay. So by 2007 then, is it fair</p> <p>19 to say O.W. Germany's reputation improved in the</p> <p>20 local market?</p> <p>21 A. For me personally, not really.</p> <p>22 Q. Okay.</p> <p>23 A. But this was different to my</p> <p>24 management.</p> <p>25 Q. So it was management's decision to</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 First Amended Complaint filed by Hapag-Lloyd in</p> <p>3 action 14-cv-9949.</p> <p>4 MR. HEILIG: I should clarify for</p> <p>5 the record that this is the pleading without</p> <p>6 exhibits.</p> <p>7 Q. Sir, have you seen this document</p> <p>8 before today?</p> <p>9 A. I've seen a lot of documents today.</p> <p>10 I'm not sure. I don't think so.</p> <p>11 Q. Did you review any documents to be</p> <p>12 filed by Hapag in these lawsuits before they</p> <p>13 were filed?</p> <p>14 In other words, did you review any</p> <p>15 of the pleadings before they were submitted by</p> <p>16 Hapag's U.S. attorneys to the court?</p> <p>17 A. I was doing testimonies last year</p> <p>18 in writing and I had to review them earlier.</p> <p>19 Q. So you reviewed them for factual</p> <p>20 accuracy?</p> <p>21 MR. FERNANDEZ: Objection. I think</p> <p>22 we're talking about different things, just to be</p> <p>23 fair to the witness. We're on pleadings and I</p> <p>24 think he's referring to maybe his declaration.</p> <p>25 I think you have to be careful with the words</p>
<p style="text-align: center;">Page 123</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 begin doing business in 2007 with O.W. Germany?</p> <p>3 A. Yes, because O.W. at that time</p> <p>4 reached a position at the market which could not</p> <p>5 be an oversight. They really grow up to real</p> <p>6 big oil trader, bunker trader.</p> <p>7 Q. Okay. I believe you testified</p> <p>8 earlier that as a condition of doing business</p> <p>9 with O.W. Germany, O.W. Germany had to accept</p> <p>10 Hapag's terms and conditions?</p> <p>11 A. Right. This was the kind of my</p> <p>12 personal securant, or securing that we have a</p> <p>13 real plain and sound business case with O.W.</p> <p>14 Germany.</p> <p>15 Q. Okay. So if I understand you</p> <p>16 correctly, the acceptance of Hapag's terms by</p> <p>17 O.W. Germany gave Hapag some feeling of comfort</p> <p>18 or some level of security that they could do</p> <p>19 business --</p> <p>20 A. Confidence.</p> <p>21 Q. Confidence that they could do</p> <p>22 business with O.W. Germany?</p> <p>23 A. Yes.</p> <p>24 Q. Let's take a look at a document</p> <p>25 that has been marked as Exhibit 46, it's the</p>	<p style="text-align: center;">Page 125</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 you have.</p> <p>3 MR. HEILIG: Fair enough.</p> <p>4 Q. Let's just take a look at the</p> <p>5 document then. Would you mind looking at page</p> <p>6 5, and specifically paragraph 17?</p> <p>7 A. Yes.</p> <p>8 Q. In reviewing this document now,</p> <p>9 does this refresh your recollection as to</p> <p>10 whether you've seen this document prior to</p> <p>11 today?</p> <p>12 A. Yes. This was the contract we have</p> <p>13 discussed earlier today.</p> <p>14 Q. If we look at the document</p> <p>15 previously marked as Exhibit Number 3, the ARA</p> <p>16 contract. Is this the document that you're</p> <p>17 referring to?</p> <p>18 A. Right.</p> <p>19 MR. FERNANDEZ: Just note my</p> <p>20 continued line of objection with regard to</p> <p>21 pleadings and legal issues. He's in the fuel</p> <p>22 department, so I'm going to have a continuing</p> <p>23 line of objections relative to pleadings and</p> <p>24 anything relative to that type of issue.</p> <p>25 A. In fact, just to make it clear, I</p>

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<p>1 Norbert Kock (1-19-16) 2 have no understanding about what is a pleading. 3 THE WITNESS: Maybe you could 4 translate this for me, what is a pleading? 5 (Interpreter conferring with the 6 witness) 7 MR. FERNANDEZ: A lawsuit. 8 Q. This document was filed by Hapag 9 with the court specifying what their allegations 10 are as to the facts and to the relationships of 11 the parties, as well as to the relief sought by 12 Hapag? 13 A. I was not engaged in it. 14 Q. Okay. But you understand the 15 reference in paragraph 17 is to this ARA 16 contract in Exhibit 3? 17 A. Yes. 18 Q. I believe you testified earlier the 19 ARA contract dealt with the Ports of Antwerp, 20 Rotterdam, and was it Amsterdam as well? 21 A. Amsterdam. May I interrupt? 22 Q. Sure. 23 A. Because this contract is clearly 24 stating Antwerp and Rotterdam, so Amsterdam is 25 not included. This is the abbreviation, this is</p>	<p>1 Norbert Kock (1-19-16) 2 and that's a reference to this ARA contract. 3 So if I understand you correctly, 4 the ARA contract does not have any relevance to 5 bunker transactions at U.S. ports. So my 6 question is, is this still correct, that in the 7 normal course of business Hapag would remit 8 payment to O.W. Germany for bunker transactions 9 taking place at U.S. ports? 10 MR. KEOUGH: Objection to the form. 11 MR. FERNANDEZ: Objection. 12 A. Yes. 13 Q. So even though this contract in 14 Exhibit 3 might not be relevant, payment would 15 still be remitted from Hapag to O.W. Germany for 16 bunker transactions for which O.W. Germany 17 received the nomination? 18 MR. FERNANDEZ: Objection to the 19 form. 20 MR. KEOUGH: Objection. 21 Q. In other words, Hapag would not pay 22 a physical supplier directly? 23 A. No. 24 Q. Never. Okay. Did Hapag ever 25 receive invoices directly from the physical</p>
<p style="text-align: center;">Page 127</p> <p>1 Norbert Kock (1-19-16) 2 a common abbreviation in North Europe or 3 Northwest Europe to say we are talking about 4 Antwerp, Rotterdam and Amsterdam, but the 5 contract we have been agreed upon was only based 6 in Antwerp and Rotterdam. 7 Q. So perhaps a better title for the 8 document would be AR contract? 9 A. Right. 10 Q. What relevance does Exhibit 3, the 11 ARA contract, what relevance does it have to 12 bunker transactions that took place at U.S. 13 ports? 14 A. No relevance. 15 Q. Okay. So that contract does not 16 govern the transactions that we've been 17 discussing today with respect to the vessels? 18 MR. KEOUGH: Objection. 19 A. This was the contract based on 20 Rotterdam and Antwerp supplies. 21 Q. Paragraph 1 the on the same page 22 says, "In the normal course of business 23 Hapag-Lloyd" and it's abbreviated HLag "would 24 remit payment to O.W. Germany for bunker 25 supplied under the Hapag Marine Fuel Contract,"</p>	<p style="text-align: center;">Page 129</p> <p>1 Norbert Kock (1-19-16) 2 suppliers for bunker nominations awarded to O.W. 3 Germany? 4 A. There is a chance that this has 5 been done in the course of bankruptcy when we 6 had to cover on a very short notice bunker 7 deliveries in the Port of Antwerp and Rotterdam. 8 Q. Prior to the bankruptcy did that 9 ever occur? 10 A. No, not prior. 11 Q. Let's look at what has been marked 12 as Exhibit 47, and this is Mr. Kock's 13 Declaration from action 15-cv-6718, which was 14 transferred from the U.S. District Court of the 15 Western District of Washington to the Southern 16 District of New York. 17 Sir, do you recognize this 18 document? 19 A. Yes. 20 Q. This is a declaration that you 21 signed on behalf of Hapag-Lloyd? 22 A. Yes. 23 Q. I take it then that you reviewed 24 this document for the accuracy of its contents 25 before signing?</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. And it's accurate, to the best of</p> <p>4 your knowledge and belief?</p> <p>5 A. Yes.</p> <p>6 Q. Let's take a look at page 2,</p> <p>7 paragraphs 4 and 5; well really 4, 5 and 6. It</p> <p>8 appears that these paragraphs discuss the</p> <p>9 submission of bunker requisitions via email from</p> <p>10 the vessels and then the fuel department, your</p> <p>11 department evaluating those requisitions.</p> <p>12 Does this declaration essentially</p> <p>13 summarize the bunkering process that we</p> <p>14 discussed earlier with Mr. Maloney, ING's</p> <p>15 counsel?</p> <p>16 A. Yes.</p> <p>17 Q. Can you tell me a bit more about</p> <p>18 what goes into the evaluation process discussed</p> <p>19 in paragraph 5 after receipt of a bunker</p> <p>20 requisition from a vessel?</p> <p>21 A. In general, we try to supply on the</p> <p>22 most economic basis our fleet of container</p> <p>23 vessels. We are always trying to have advantage</p> <p>24 of local price differences. So if vessels comes</p> <p>25 to the U.S. East Coast we do not concentrate on</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 worse price term, because the energy content of</p> <p>3 the fuel is better for the vessels?</p> <p>4 A. Yes, right.</p> <p>5 Q. Would Hapag also take into</p> <p>6 consideration whether a trader would be able to</p> <p>7 supply at multiple ports, as opposed to just one</p> <p>8 port?</p> <p>9 A. This is not our preference.</p> <p>10 Q. In paragraph 5 of your declaration</p> <p>11 you discuss beginning the process of soliciting</p> <p>12 bids for the supply of fuel from various</p> <p>13 traders, and there's a footnote, footnote 1,</p> <p>14 which discusses the distinction between a trader</p> <p>15 and a bunker broker.</p> <p>16 I was wondering if you could just</p> <p>17 describe for me what that distinction is in a</p> <p>18 bit of greater detail?</p> <p>19 A. Yeah, I mean --</p> <p>20 MR. KEOUGH: Objection.</p> <p>21 A. We have a clear understanding about</p> <p>22 the role of a bunker broker and the bunker</p> <p>23 trader, because the bunker broker is just</p> <p>24 knowing a supplier and he's knowing a shipowner</p> <p>25 requiring fuel oil, and he's bringing together</p>
<p style="text-align: center;">Page 131</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 only one port, for example New York, we will</p> <p>3 always include other ports in the chain of the</p> <p>4 vessel's schedule which could be then Halifax,</p> <p>5 North Fork, Savannah.</p> <p>6 We will tender all these ports</p> <p>7 together in one go and then select the most</p> <p>8 economic offer at the specific port, which could</p> <p>9 be then New York or even Halifax or North Fork</p> <p>10 or Savannah, that's what we are evaluating.</p> <p>11 Q. I believe we saw documents earlier</p> <p>12 in which the physicals or the fuel specs were</p> <p>13 provided by O.W. Germany to Hapag-Lloyd for</p> <p>14 Tacoma, Oakland and Los Angeles on the West</p> <p>15 Coast?</p> <p>16 A. Yes.</p> <p>17 Q. That would be the same?</p> <p>18 A. It's the same pattern. It's the</p> <p>19 same pattern in Northwest Europe where we are</p> <p>20 also trying to compare in between Rotterdam,</p> <p>21 Antwerp and Hamburg sometimes.</p> <p>22 Q. If I understand your earlier</p> <p>23 testimony correctly, Hapag will evaluate both</p> <p>24 the price as well as the fuel specs. If it's a</p> <p>25 better fuel spec it might agree to accept a</p>	<p style="text-align: center;">Page 133</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 those parties.</p> <p>3 And then he's cashing in his, what</p> <p>4 is it, margin and stepping back and leaving the</p> <p>5 shipowner together with the physical supplier to</p> <p>6 arranging and agreeing on the business. The</p> <p>7 contract comes together or works together</p> <p>8 between the shipowner, the buyer and the</p> <p>9 physical supplier locally.</p> <p>10 So this is not what we are after</p> <p>11 because we are trying to secure not only the</p> <p>12 quality of the product, but also the legal</p> <p>13 status of the contract, that's why we are just</p> <p>14 working with parties accepting our terms and</p> <p>15 conditions of purchasing.</p> <p>16 So this needs to be -- it could be</p> <p>17 a physical supplier accepting them, but in most</p> <p>18 cases, especially U.S.-based physical suppliers</p> <p>19 are not interested to accept them because they</p> <p>20 might be too sharp for them, so we are taking</p> <p>21 advantage of the services of a bunker trader.</p> <p>22 If the bunker trader is owing the product that's</p> <p>23 what we are demanding, we are expecting that</p> <p>24 he's owning the product.</p> <p>25 MR. FERNANDEZ: Owing?</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 THE WITNESS: He owns.</p> <p>3 THE INTERPRETER: Owning.</p> <p>4 A. He owns the product and is selling</p> <p>5 it to us on this risk, and based also on his</p> <p>6 invoice.</p> <p>7 Q. Do you know whether it's customary</p> <p>8 for a broker to simply invoice its commission</p> <p>9 for the full selling invoice price for the</p> <p>10 bunker fuel?</p> <p>11 A. What I was experiencing in the past</p> <p>12 was that the invoice was always coming from the</p> <p>13 physical supplier. When we have been doing</p> <p>14 business, we are brokers, long, long ago.</p> <p>15 Q. And the broker would issue its own</p> <p>16 invoice for its commission?</p> <p>17 A. Yeah.</p> <p>18 Q. Let's pose a hypothetical. If O.W.</p> <p>19 Germany were acting as a broker in a transaction</p> <p>20 in which U.S. Oil physically supplied the fuel,</p> <p>21 again, if O.W. Germany were acting as a broker</p> <p>22 U.S. Oil would have issued an invoice to</p> <p>23 Hapag-Lloyd, and O.W. Germany would have issued</p> <p>24 a separate invoice to Hapag-Lloyd for its</p> <p>25 commission?</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. In paragraph 9, which starts on the</p> <p>3 bottom of page 3 and goes to the top of page 4,</p> <p>4 you discuss an incident where Hapag faced a</p> <p>5 significant claim in the United States in the</p> <p>6 1990s involving a foreign bunker broker.</p> <p>7 Would you mind just explaining a</p> <p>8 bit more about that, that claim and that issue,</p> <p>9 explain its relevance to these transactions here</p> <p>10 today?</p> <p>11 A. The relevance to this or to these</p> <p>12 transactions is to try to explain why we are</p> <p>13 changing the policy from using brokers to using</p> <p>14 traders instead, because at that time we had a</p> <p>15 claim, I think it was on the U.S. West Coast,</p> <p>16 and the fuel was not stable so the vessel had</p> <p>17 experienced severe operational problems.</p> <p>18 They could manage to operate, but</p> <p>19 it was taking additional manpower to clean out</p> <p>20 the filters and to clean up the purification</p> <p>21 plant of that vessel so the vessel could</p> <p>22 maintain the voyage, but only with additional</p> <p>23 manpower, as far as I can remember.</p> <p>24 So we claimed the delivery with the</p> <p>25 physical supplier, I do not recognize, it's too</p>
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<p>1 Norbert Kock (1-19-16)</p> <p>2 MR. KEOUGH: Objection to the form.</p> <p>3 A. Probably, yes.</p> <p>4 Q. But that's not what occurred here?</p> <p>5 A. No.</p> <p>6 Q. In footnote 2 of your declaration</p> <p>7 you say you completely disagree with U.S. Oil's</p> <p>8 characterization of O.W. Denmark as a bunker</p> <p>9 broker.</p> <p>10 Again, I believe you've answered</p> <p>11 this from your perspective. From Hapag's</p> <p>12 perspective O.W. Germany was its contractual</p> <p>13 counterparty, correct?</p> <p>14 A. O.W. Germany was our contractual</p> <p>15 counterparty.</p> <p>16 Q. Hapag-Lloyd did not contract with</p> <p>17 O.W. Denmark in these transactions?</p> <p>18 A. Never.</p> <p>19 Q. And O.W. Germany was a trader in</p> <p>20 part because it agreed to A, sell the bunker</p> <p>21 fuel to Hapag-Lloyd; and B, agree to accept</p> <p>22 Hapag-Lloyd's terms and conditions; and C,</p> <p>23 assume the risk for that sale?</p> <p>24 A. That's right.</p> <p>25 MR. KEOUGH: Objection.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 long ago, and he did not answer our claim. He</p> <p>3 just stepped back and stopped communicating with</p> <p>4 us.</p> <p>5 Q. Okay. Had they been paid by that</p> <p>6 time?</p> <p>7 A. They had been paid.</p> <p>8 Q. So essentially Hapag had no</p> <p>9 recourse --</p> <p>10 A. The money was out and there was no</p> <p>11 more trigger to motivate them to answer.</p> <p>12 Q. Okay. Paragraph 7 on page 3 you</p> <p>13 state, "O.W. Germany solicited business as</p> <p>14 having the ability to serve as a one-stop shop</p> <p>15 for the sales/supply of fuel to vessels, thereby</p> <p>16 undertaking complete responsibility for all</p> <p>17 aspects of the transaction, including <i>inter alia</i></p> <p>18 procurement delivery supply quality and</p> <p>19 quantity."</p> <p>20 What did you mean by a one-stop</p> <p>21 shop?</p> <p>22 A. To have one party responsible for</p> <p>23 supply to our vessel.</p> <p>24 Q. Is this --</p> <p>25 A. Not to interact with all these</p>

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<p>1 Norbert Kock (1-19-16) 2 parties which could be an in between. 3 Q. Is it fair to say then that Hapag 4 did not care what happened downstream of O.W. 5 Germany in terms of dealing with subcontractors, 6 physical suppliers?</p> <p>7 MR. KEOUGH: Objection. 8 A. That's not our business. 9 Q. If I understand correctly from what 10 you said a few minutes ago, O.W. Germany's 11 solicitation of business, as having the ability 12 to serve as a one-stop shop, satisfied Hapag's 13 upper management that they could begin doing 14 business with O.W. Germany in 2007, is that 15 correct?</p> <p>16 MR. FERNANDEZ: Objection to the 17 form. You can answer the question. 18 A. Yes, it seems so. 19 Q. So if I understand sort of as a 20 synthesis of what you said already, Hapag-Lloyd 21 never authorized or pointed O.W. Germany as an 22 agent to order fuel on Hapag's behalf, is that 23 correct?</p> <p>24 MR. KEOUGH: Objection. 25 A. Never.</p>	<p>1 Norbert Kock (1-19-16) 2 A. Yes. 3 Q. The 2006 version? 4 A. Yes. 5 Q. And the version attached to 6 Exhibit 3? 7 A. This is the version which has been 8 negotiated with O.W. Bunker during the process 9 of negotiating the contract in Rotterdam and 10 Antwerp. 11 Q. The ARA contract? 12 A. The ARA contract. 13 Q. Which has no relevance to the 14 transactions at issue here in these actions? 15 MR. KEOUGH: Objection to the form. 16 A. Right. 17 Q. So really the version attached to 18 Exhibit H 1 are the terms that apply to the 19 contracts between Hapag-Lloyd and O.W. Germany 20 for these transactions? 21 A. Yeah. 22 MR. KEOUGH: Objection. 23 A. This has been also confirmed by 24 O.W.. 25 Q. It's signed and stamped by O.W.</p>
<p style="text-align: center;">Page 139</p> <p>1 Norbert Kock (1-19-16) 2 Q. Did Hapag-Lloyd ever advise U.S. 3 Oil or O'Rourke Marine that O.W. Germany was 4 acting as an agent of Hapag-Lloyd? 5 A. No. 6 Q. Let's take a look at Exhibit H 1 7 which is attached to your declaration toward the 8 back. I would also like you to take a look at 9 Exhibit 3, the third page of Exhibit 3 which is 10 Bates stamped USOT 000103 through 107. I want 11 you to compare these two. 12 It seems like we have two sets of 13 terms and conditions used by Hapag-Lloyd. The 14 version attached to Exhibit 3 appears to be 15 3 pages long, and the version appearing at 16 Exhibit H 1 of your declaration is 5 pages long. 17 Do you understand what the 18 difference is between these two versions? 19 A. The first version here which was 20 dated 2006, this is the version we were 21 discussing earlier today, which has been always 22 mentioned by O.W. as the terms and conditions of 23 2007. 24 Q. And that's the version attached as 25 Exhibit H 1 to your declaration?</p>	<p style="text-align: center;">Page 141</p> <p>1 Norbert Kock (1-19-16) 2 Germany? 3 A. Yeah, but it has been also 4 confirmed by O.W. in their order. 5 Q. In their sales order confirmations. 6 Even though Hapag's purchase order confirmations 7 refer to the latest edition, it's the sales 8 order confirmation and O.W. Germany's 9 identification of the 2006 version that apply? 10 A. Yes. 11 MR. KEOUGH: Objection. 12 Q. Correct me if I'm wrong, but I 13 believe you testified earlier that Hapag did not 14 control O.W. Germany's selection of a physical 15 supplier or a subcontractor for the purchase of 16 a bunker fuel that had been supplied to Hapag? 17 MR. KEOUGH: Objection. 18 A. This is not our business. 19 Q. So Hapag did not instruct O.W. 20 Germany to use certain physical suppliers at 21 various ports? 22 A. No. 23 MR. KEOUGH: Objection. 24 MR. HEILIG: Let's take a 3-minute 25 break and mark some exhibits.</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Right.</p> <p>3 MR. KEOUGH: Objection to the form.</p> <p>4 Q. The master doesn't have authority</p> <p>5 to bind Hapag to the terms that are on a bunker</p> <p>6 delivery?</p> <p>7 MR. KEOUGH: Objection.</p> <p>8 A. No.</p> <p>9 Q. The master doesn't have authority</p> <p>10 to deviate from Hapag's terms and conditions</p> <p>11 which govern the purchase contract?</p> <p>12 MR. KEOUGH: Objection.</p> <p>13 A. They do not have an authorization</p> <p>14 from Hapag-Lloyd.</p> <p>15 Q. If you look at Exhibit 6. Again,</p> <p>16 this is just Hapag's confirmation email to the</p> <p>17 vessel indicating that the requisition form has</p> <p>18 been received, and that Hapag will make</p> <p>19 arrangements accordingly, correct?</p> <p>20 A. Yes.</p> <p>21 MR. KEOUGH: Objection.</p> <p>22 Q. If we look at the date on</p> <p>23 Exhibit 6. What's the date on the email?</p> <p>24 A. The date?</p> <p>25 Q. Yes.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 I believe you testified that this would be</p> <p>3 Hapag's email to the market soliciting bids to</p> <p>4 supply the SANTA ROBERTA, is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. On the reverse we have the</p> <p>7 actual inquiry form, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. Do you see a paragraph about</p> <p>10 halfway down the page that begins "Please take</p> <p>11 into consideration"?</p> <p>12 A. Yes.</p> <p>13 Q. This paragraph makes reference to</p> <p>14 Hapag's terms and conditions?</p> <p>15 A. That's true.</p> <p>16 Q. And it's the latest edition?</p> <p>17 A. That's true.</p> <p>18 Q. So would this alter in any way your</p> <p>19 earlier testimony about which version of Hapag's</p> <p>20 terms applies to its contracts with O.W.</p> <p>21 Germany?</p> <p>22 MR. MALONEY: Objection to the</p> <p>23 form.</p> <p>24 A. This is a standard text here, and</p> <p>25 what we can see in O.W.'s order confirmation is</p>
<p style="text-align: center;">Page 147</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. The date was September 30, 2014.</p> <p>3 Q. What's the date on the email with</p> <p>4 the requisition form from the vessel?</p> <p>5 A. This was September 26th. This was</p> <p>6 sent on a Friday and has been answered on a</p> <p>7 Tuesday. There was a weekend in between.</p> <p>8 Q. Are there individuals in your team</p> <p>9 in the office over the weekend who would be I</p> <p>10 guess conducting the evaluation process?</p> <p>11 A. No.</p> <p>12 Q. So then on Monday morning, for</p> <p>13 example, they would have looked on the valuation</p> <p>14 process that we discussed earlier?</p> <p>15 A. Yes.</p> <p>16 Q. And by Tuesday they would get back</p> <p>17 to the vessel?</p> <p>18 A. Yeah. I would have been expected</p> <p>19 to do it on Monday orally, but there might be a</p> <p>20 reason that they couldn't do it so they did it</p> <p>21 on a Tuesday morning.</p> <p>22 Q. Please do not admonish your</p> <p>23 subordinates based on what we've said today.</p> <p>24 Look at Exhibit 7. The first page,</p> <p>25 document number 139 and the reverse side, 140.</p>	<p style="text-align: center;">Page 149</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 that they were referring to the terms and</p> <p>3 conditions from 2006, and we accepted that.</p> <p>4 Q. Okay.</p> <p>5 A. Because we did not protest.</p> <p>6 Q. So in other words, this doesn't</p> <p>7 change your earlier testimony?</p> <p>8 A. No.</p> <p>9 Q. Okay. Let's take a look at</p> <p>10 Exhibits 8 and 9. I just want you to look at</p> <p>11 the first page of Exhibit 8 and Exhibit 9. I</p> <p>12 believe Exhibit 8 is one where we've put several</p> <p>13 documents together that perhaps should not have</p> <p>14 been together, but that's all right.</p> <p>15 I believe you testified earlier</p> <p>16 that what we have in Exhibit 8 is one of the</p> <p>17 offers from Peninsula Petroleum, which is</p> <p>18 another trader, is that correct?</p> <p>19 A. Right.</p> <p>20 Q. Exhibit 9 we have the typical</p> <p>21 supply by O.W. Germany with the specifications</p> <p>22 for the fuel?</p> <p>23 A. Right.</p> <p>24 Q. If you look at the third page of</p> <p>25 Exhibit 8. Am I correct that you described this</p>

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<p>1 Norbert Kock (1-19-16) 2 earlier as a price comparison? 3 A. Yes. 4 Q. Essentially, this shows 5 Hapag-Lloyd's process of evaluating the bids or 6 the offers that it received from various 7 traders? 8 A. That's true. 9 Q. One of which would be O.W. Bunker 10 Germany? 11 A. Yes. 12 Q. Is this an internal document? 13 A. Yes. 14 Q. So this would not have been shared 15 with O.W. Germany? 16 A. No. 17 Q. And would not have been shared with 18 the physical suppliers? 19 A. Or anybody else. 20 Q. Anybody else? 21 A. Just internally, and if there is an 22 audit going on. 23 Q. If we look at the furthest column 24 to the left we have the names of the various 25 traders that issued offers to Hapag-Lloyd, is</p>	<p>1 Norbert Kock (1-19-16) 2 presumably per metric ton, and O.W. Bunker's 3 first offer was 554 per metric ton? 4 A. You have to be careful with the 5 last column here which is stating which port is 6 offered. So could be please repeat your 7 question? 8 Q. I'm not sure I had a pending 9 question. It just appears that the offer stated 10 for GEFO is a dollar less than O.W. Bunker 11 Germany in that first column entitled "Offer"? 12 A. That's true. 13 Q. If I understand your earlier 14 testimony, the lowest price did not necessarily 15 win the nomination because the fuel quality 16 might be better? 17 A. Yes. 18 Q. And that's a factor that would be 19 taken into consideration which Hapag? 20 A. The energy contents, right. 21 Q. The energy contents, right. If we 22 go over three columns it's again entitled "One 23 offer," but it appears to be for the marine 24 diesel oil header column? 25 A. Yes.</p>
<p>1 Norbert Kock (1-19-16) 2 that correct? 3 A. Right. 4 Q. Remind me, did you identify GF or 5 GEFO before? 6 A. Yes. 7 Q. And who is that? 8 A. This is a German-based or a 9 Hamburg-based trader we are using from time to 10 time. 11 Q. So if we look at the next column to 12 the right, number 1, offer, we see that -- how 13 do you pronounce it? 14 A. GEFO is the abbreviation for 15 Gesellschaft transport. 16 THE INTERPRETER: Society for oil 17 transportation. 18 A. This is a tanker owner operating in 19 the Baltic mainly and the North Sea coast area, 20 owning tankers and operate them, and having a 21 fuel oil purchasing department which were grown 22 into also a trading department offering their 23 services to external other shipowners. 24 Q. Okay. So it appears from this 25 document that GEFO's second offer was 553</p>	<p>1 Norbert Kock (1-19-16) 2 We see GEFO's first offer was 3 better than O.W. Bunker Germany, then O.W. 4 Bunker Germany made a second bid at a lower 5 price, is that correct? 6 A. Where are you at the moment? 7 Q. Under the MDO O.W. Bunker 2 TE, it 8 looks like the price went from 895 to 885? 9 A. Yes. 10 Q. So at some point O.W. Bunker 11 Germany improved its offer to the MDO. Do I 12 understand correctly that the negotiation of 13 pricing would have taken place likely over the 14 phone? 15 A. Yes. 16 Q. Okay. Again, this is just an 17 internal document that would not have been 18 shared? 19 A. That's correct. 20 Q. Let's take a look at a document 21 that's been marked as Exhibit 48, this is Bates 22 number HPL-USOT 154 through 159. 23 Do you recall if you looked at an 24 email similar to this earlier on today? 25 A. Yes.</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I believe we discussed a bit about</p> <p>3 Norton Lilly and Oilttest, is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. If I understand correctly, Norton</p> <p>6 Lilly was the local agent at the port?</p> <p>7 A. That's right.</p> <p>8 Q. And Oilttest was the surveyor</p> <p>9 appointed to essentially run quality control on</p> <p>10 the fuel specs?</p> <p>11 A. Yes, and quality.</p> <p>12 Q. What would be the purpose of the</p> <p>13 email at pages 154 to 155?</p> <p>14 A. To inform the local agent, the</p> <p>15 vessel, the stowage planners, as well as the</p> <p>16 attending surveyor about this order we did.</p> <p>17 Q. So it's really logistics and</p> <p>18 coordinating the physical supplier at the port?</p> <p>19 A. It's only logistics.</p> <p>20 Q. Neither Norton Lilly nor Oilttest</p> <p>21 plays any part in the negotiation or the</p> <p>22 formation of a contract for the purchase of fuel</p> <p>23 oil?</p> <p>24 A. No.</p> <p>25 Q. Do you know whether Hapag's</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 whether that was a preexisting stamp or if you</p> <p>3 had done it.</p> <p>4 MR. FERNANDEZ: We had done it.</p> <p>5 MR. HEILIG: There's no testimony</p> <p>6 to mark as confidential.</p> <p>7 Q. Earlier we discussed a bit about</p> <p>8 what would happen if a claim were to arise in a</p> <p>9 particular transaction.</p> <p>10 Would a claim arise based on the</p> <p>11 survey conducted by Oilttest, for example?</p> <p>12 A. For example, yes.</p> <p>13 Q. Let's take a look at a document</p> <p>14 that's been marked as Exhibit Number 50, this is</p> <p>15 Bates number HPL-USOT 160 through 162. Do you</p> <p>16 recognize these documents?</p> <p>17 A. Yes.</p> <p>18 Q. Page 161, is this a fuel survey</p> <p>19 report submitted by Oilttest to Hapag-Lloyd for</p> <p>20 the SANTA ROBERTA transaction?</p> <p>21 A. Yes.</p> <p>22 Q. So the fuel surveyor would have</p> <p>23 completed the document on page 161?</p> <p>24 A. Yes.</p> <p>25 Q. Page 162 we have a photograph which</p>
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<p>1 Norbert Kock (1-19-16)</p> <p>2 relationship with Norton Lilly is governed by</p> <p>3 written contracts?</p> <p>4 A. I'm not involved in that business,</p> <p>5 but there must be a contract onboard, otherwise</p> <p>6 they won't work for us.</p> <p>7 Q. Let's look at a document that has</p> <p>8 been marked as Exhibit 49, Bates stamps HPL-USOT</p> <p>9 285 through 309.</p> <p>10 Sir, have you seen this document</p> <p>11 before today?</p> <p>12 A. No.</p> <p>13 Q. I take it then it's fair to say you</p> <p>14 did not play any part in drafting or negotiating</p> <p>15 this document?</p> <p>16 A. That's correct.</p> <p>17 Q. And you're not familiar with its</p> <p>18 terms?</p> <p>19 A. No.</p> <p>20 Q. Well then we'll move on.</p> <p>21 MR. FERNANDEZ: Just for the</p> <p>22 record, what you marked as Exhibit 49 has been</p> <p>23 marked confidential pursuant to the</p> <p>24 confidentiality agreement.</p> <p>25 MR. HEILIG: They should have asked</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 appears to be a photograph of the samples taken?</p> <p>3 A. That's right.</p> <p>4 Q. From the fuel?</p> <p>5 A. Yes.</p> <p>6 Q. Does Hapag-Lloyd require a</p> <p>7 photograph of the samples to I guess demonstrate</p> <p>8 their existence?</p> <p>9 A. Their integrity, right.</p> <p>10 Q. Would these documents be the type</p> <p>11 of documents to notify Hapag of a potential</p> <p>12 claim based on the specifications of the fuel?</p> <p>13 A. Yes.</p> <p>14 Q. If a claim were presented by</p> <p>15 Hapag-Lloyd, I believe you testified that it</p> <p>16 would be presented to O.W. Germany?</p> <p>17 A. Yes.</p> <p>18 Q. And to no one else?</p> <p>19 A. Right.</p> <p>20 Q. And Hapag-Lloyd didn't care what</p> <p>21 happened downstream of O.W. Germany with respect</p> <p>22 to those claims, correct?</p> <p>23 A. That's right.</p> <p>24 Q. All right. And if it were</p> <p>25 determined or agreed by the parties that the</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 claim was valid, there would be an adjustment in</p> <p>3 price to O.W. Germany's invoice to Hapag-Lloyd?</p> <p>4 A. That's right.</p> <p>5 Q. Irrespective of whether or not</p> <p>6 there would be a corresponding reduction or</p> <p>7 adjustment in price of the physical supplier's</p> <p>8 invoice to O.W.?</p> <p>9 A. We have no relation to the physical</p> <p>10 supplier. We are just dealing with O.W.</p> <p>11 Germany.</p> <p>12 Q. This all stems from that issue in</p> <p>13 the '90s where you dealt with the broker who</p> <p>14 simply washed his hands with the situation, and</p> <p>15 left Hapag with the recourse?</p> <p>16 A. Yes.</p> <p>17 Q. Let's take a look at Exhibit 14. I</p> <p>18 believe this was an email from the vessel</p> <p>19 attaching the bunker delivery note that was sent</p> <p>20 directly to Hapag?</p> <p>21 A. Yes.</p> <p>22 Q. Would Hapag have also received a</p> <p>23 copy of the bunker delivery note from O.W.</p> <p>24 Germany at some point?</p> <p>25 A. It could have been done at some</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Germany's invoice to Hapag-Lloyd for the SANTA</p> <p>3 ROBERTA transaction, correct?</p> <p>4 A. That's right.</p> <p>5 Q. This one is not stamped because it</p> <p>6 has not yet been entered into Hapag's accounting</p> <p>7 system?</p> <p>8 A. That's right.</p> <p>9 Q. Looking earlier we looked at the</p> <p>10 stamped version of the invoice?</p> <p>11 A. Yes.</p> <p>12 Q. And it would have been entered in</p> <p>13 the system?</p> <p>14 A. This is depending on where the</p> <p>15 copies are coming from. If the copies are</p> <p>16 coming out of our system and they had been</p> <p>17 booked into the system there is a stamp. In</p> <p>18 this case here, this is communication from O.W.</p> <p>19 Bunker to our bookkeeping department, and at</p> <p>20 that time the invoice has not been booked.</p> <p>21 Q. The stamp is Hapag's stamp?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know whether Hapag would</p> <p>24 have stamped the copy received by email or would</p> <p>25 Hapag have waited for the original to arrive by</p>
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<p>1 Norbert Kock (1-19-16)</p> <p>2 point together with the invoice.</p> <p>3 Q. Okay. Let's take a look at a</p> <p>4 document that has been marked as Exhibit 51,</p> <p>5 Bates number OWG-9949-230 through 233.</p> <p>6 The email on page 230 is in German</p> <p>7 so I will have to rely on you to translate, or</p> <p>8 our trusted translator. Can you describe this</p> <p>9 email for me?</p> <p>10 A. Yeah. This is a message from</p> <p>11 Victoria Bohn who's an administrative worker at</p> <p>12 O.W. at that time addressing this email to</p> <p>13 Marion Sakowski, who is a manager in our</p> <p>14 accounting department saying hello Frau Sakowski</p> <p>15 or hello Mrs. Sakowski, attached you receive</p> <p>16 invoice and bunker delivery note for the</p> <p>17 bunkering of M/V, Motor Vessel SANTA ROBERTA</p> <p>18 Tacoma on October 9, 2014. The original will</p> <p>19 follow per courier.</p> <p>20 Q. So Hapag would receive copies of</p> <p>21 the bunker delivery note and the invoice and the</p> <p>22 original by mail?</p> <p>23 A. Yes.</p> <p>24 Q. If we look at the third page,</p> <p>25 document number 232, we have a copy of O.W.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 courier?</p> <p>3 A. At that time the accounting</p> <p>4 department was not allowed to process invoices</p> <p>5 coming by email. The local taxing authorities</p> <p>6 in German were demanding us just to process</p> <p>7 original invoices received and not copies.</p> <p>8 Q. So it's fair to assume the stamped</p> <p>9 version we looked at earlier was the hard copy</p> <p>10 received by Hapag-Lloyd?</p> <p>11 A. Yes.</p> <p>12 Q. Let's take a look at Exhibit 15.</p> <p>13 Just remind me again what the German word</p> <p>14 translates to?</p> <p>15 A. This is the payment notice that</p> <p>16 there is money in the pipeline.</p> <p>17 Q. We looked earlier and saw that the</p> <p>18 SANTA ROBERTA is identified on this document?</p> <p>19 A. Yes.</p> <p>20 Q. How would Hapag-Lloyd make payment</p> <p>21 to O.W. Germany, physical payment; was it by</p> <p>22 check or wire payment?</p> <p>23 A. Wire payment.</p> <p>24 Q. Would this document be issued</p> <p>25 before or after the actual wire payment was</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 MR. FERNANDEZ: Objection.</p> <p>3 A. It should have been Captain Grundel</p> <p>4 if he was onboard at that time, yes.</p> <p>5 Q. According to the crew list he was</p> <p>6 the captain?</p> <p>7 A. Yes.</p> <p>8 Q. At that time, right?</p> <p>9 A. Yes.</p> <p>10 MR. FERNANDEZ: Objection.</p> <p>11 Q. Is the SOFIA EXPRESS still owned by</p> <p>12 Hapag-Lloyd?</p> <p>13 A. Yes.</p> <p>14 Q. Is the VIENNA EXPRESS still owned</p> <p>15 by Hapag-Lloyd?</p> <p>16 A. Yes.</p> <p>17 Q. I direct your attention to</p> <p>18 Exhibit 32, to the second page which is marked</p> <p>19 HPL-USOT 00198. Would you look at the second</p> <p>20 page please, sir?</p> <p>21 Is that the bunker delivery receipt</p> <p>22 for the VIENNA EXPRESS?</p> <p>23 A. Yes.</p> <p>24 Q. Is it your understanding that the</p> <p>25 chief engineer of the VIENNA EXPRESS signed that</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I'm showing you what's been</p> <p>3 produced by your counsel as HPL-USOT page 89,</p> <p>4 which appears to be a crew list for the VIENNA</p> <p>5 EXPRESS, which I'm placing before you.</p> <p>6 Do you recognize that the name of</p> <p>7 the chief engineer depicted on that page -- do</p> <p>8 you recognize whether the name of the chief</p> <p>9 engineer is depicted on that page?</p> <p>10 A. It looks like the chief engineer,</p> <p>11 Marek Sojda, was the responsible chief engineer</p> <p>12 for the vessel at that time, and the signature</p> <p>13 looks like Sojda. I would agree.</p> <p>14 Q. Other than the document that you've</p> <p>15 reviewed in Germany and here, the testimony that</p> <p>16 you described, did you review any diaries or</p> <p>17 calendar that you may have kept in October of</p> <p>18 2014?</p> <p>19 A. No.</p> <p>20 Q. In preparation for your testimony</p> <p>21 today?</p> <p>22 A. No.</p> <p>23 Q. At the time, in October of 2014,</p> <p>24 did you have a practice of maintaining a</p> <p>25 notebook or a diary of the work that was going</p>
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<p>1 Norbert Kock (1-19-16)</p> <p>2 bunker delivery receipt?</p> <p>3 MR. FERNANDEZ: Objection.</p> <p>4 A. Yeah, it has been signed by the</p> <p>5 chief engineer.</p> <p>6 Q. And the chief engineer signed that</p> <p>7 on behalf of the vessel?</p> <p>8 MR. FERNANDEZ: Objection.</p> <p>9 Q. Using the stamp marked there?</p> <p>10 MR. FERNANDEZ: Objection.</p> <p>11 MR. MALONEY: Objection.</p> <p>12 MR. HEILIG: Objection.</p> <p>13 A. He signed it on behalf of</p> <p>14 Hapag-Lloyd.</p> <p>15 Q. And it bears the stamp also on the</p> <p>16 right side, Hapag-Lloyd VIENNA EXPRESS, do you</p> <p>17 see that?</p> <p>18 A. Yes.</p> <p>19 Q. In the course of your duties as the</p> <p>20 director of purchasing, you're used to seeing</p> <p>21 stamps of the vessel and Hapag-Lloyd on these</p> <p>22 bunker delivery receipts?</p> <p>23 MR. FERNANDEZ: Objection.</p> <p>24 A. When it was a Hapag-Lloyd vessel,</p> <p>25 yes.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 on in your department?</p> <p>3 A. No.</p> <p>4 Q. In the course of your experience as</p> <p>5 the director of purchasing for Hapag-Lloyd, have</p> <p>6 you come to learn that a supplier of fuel to a</p> <p>7 vessel, a Hapag-Lloyd vessel, may have a right</p> <p>8 to assert a lien against the vessel itself?</p> <p>9 MR. FERNANDEZ: Objection.</p> <p>10 MR. HEILIG: Objection.</p> <p>11 MR. MALONEY: Objection.</p> <p>12 A. Maybe a seller, but a supplier, no.</p> <p>13 Q. You've developed some familiarity</p> <p>14 that a seller might have a lien against a</p> <p>15 Hapag-Lloyd vessel in some circumstances, is</p> <p>16 that fair to say?</p> <p>17 MR. FERNANDEZ: Objection.</p> <p>18 A. I think this is part also of our</p> <p>19 terms and conditions.</p> <p>20 Q. Prior to the O.W. bankruptcy, did</p> <p>21 you have any experience with any seller or</p> <p>22 supplier claiming that they had a lien against a</p> <p>23 Hapag-Lloyd vessel for non-payment?</p> <p>24 A. No.</p> <p>25 MR. HEILIG: Objection.</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 Lilly to assist you with?</p> <p>3 MR. FERNANDEZ: Objection to the</p> <p>4 form.</p> <p>5 MR. MALONEY: Objection to the</p> <p>6 form.</p> <p>7 MR. HEILIG: Objection.</p> <p>8 A. Yes.</p> <p>9 Q. Would you look at paragraph 19. Do</p> <p>10 you see at the end of the second sentence in</p> <p>11 that paragraph you say:</p> <p>12 "Additionally, execution of the</p> <p>13 bunker delivery receipt simply acknowledged</p> <p>14 receipt of the fuel as to volume and delivery</p> <p>15 temperature only and did not ratify performance</p> <p>16 of USOT concerning delivery of fuel."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. What did you mean by "ratify"</p> <p>20 performance of USOT concerning delivery of</p> <p>21 fuel"?</p> <p>22 A. That we just confirm the quality,</p> <p>23 correction, the volume, the delivered volume and</p> <p>24 the delivered temperature, and that the final</p> <p>25 metric tons which will be invoiced later by the</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes, it contains much more</p> <p>3 paperwork.</p> <p>4 Q. Than Exhibit 17?</p> <p>5 MR. FERNANDEZ: Objection to the</p> <p>6 form.</p> <p>7 Q. Does it contain the additional</p> <p>8 pages of the time charter produced by your</p> <p>9 attorneys, which are omitted from Exhibit 17?</p> <p>10 A. I don't know.</p> <p>11 MR. FERNANDEZ: Objection.</p> <p>12 Q. Would you look at the document</p> <p>13 please?</p> <p>14 MR. DEHART: Can we note on the</p> <p>15 record that this document has been designated as</p> <p>16 confidential?</p> <p>17 MR. KEOUGH: Yes.</p> <p>18 A. That's a lot of paperwork in behind</p> <p>19 stating clauses to the Charter Party.</p> <p>20 MR. KEOUGH: Off the record.</p> <p>21 (Off the record)</p> <p>22 Q. Is it correct that what's been</p> <p>23 marked as Exhibit 53 contains the Bates numbers</p> <p>24 HPL-USOT 201 through 241, is that right?</p> <p>25 A. Yes.</p>
<p style="text-align: center;">Page 211</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 seller, O.W., will be calculated based on the</p> <p>3 analyzed product entity which comes later.</p> <p>4 Q. That quality analysis that you</p> <p>5 described?</p> <p>6 A. Yes.</p> <p>7 MR. KEOUGH: Let's mark this as</p> <p>8 Exhibit 53 and 54.</p> <p>9 (Kock Exhibit 53, Time Charter with</p> <p>10 attachments, Bates stamped HPL-USOT 201 through</p> <p>11 241, marked for identification.)</p> <p>12 (Kock Exhibit 54, Time Charter,</p> <p>13 Bates stamped HPL-USOT 242 through 284, marked</p> <p>14 for identification.)</p> <p>15 Q. I'm showing you what's been marked</p> <p>16 as Exhibit 53. Do you recognize that as the</p> <p>17 time charter produced by your counsel in the</p> <p>18 case that is similar to Exhibit 17, but it</p> <p>19 contains the riders and additional pages that</p> <p>20 are lacking from Exhibit 17?</p> <p>21 A. Our department is not involved in</p> <p>22 negotiating charter parties.</p> <p>23 Q. I'm just asking you if you</p> <p>24 recognize this exhibit as a more complete</p> <p>25 document?</p>	<p style="text-align: center;">Page 213</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. You understand this is a document</p> <p>3 produced by your attorneys in this case for</p> <p>4 Hapag-Lloyd?</p> <p>5 A. No.</p> <p>6 MR. KEOUGH: I'll ask counsel if</p> <p>7 he's prepared to stipulate to that effect?</p> <p>8 MR. FERNANDEZ: I'll take it under</p> <p>9 advisement.</p> <p>10 MR. KEOUGH: Thank you.</p> <p>11 Q. Would you please place Exhibit 54</p> <p>12 in front of the witness. Showing you that</p> <p>13 document, do you recognize that as a copy of a</p> <p>14 time charter produced by your counsel, which</p> <p>15 bears the Bates numbers HPL-USOT 242 through</p> <p>16 284?</p> <p>17 A. But I can't identify who was issued</p> <p>18 this document here, because it's not my</p> <p>19 business.</p> <p>20 MR. KEOUGH: That appears to be a</p> <p>21 time charter for the SANTA ROBERTA. Exhibit 53</p> <p>22 was a time charter for the SEASPAH HAMBURG.</p> <p>23 MR. FERNANDEZ: Also marked</p> <p>24 confidential for purposes of this litigation.</p> <p>25 MR. KEOUGH: Yes, I take it it is.</p>